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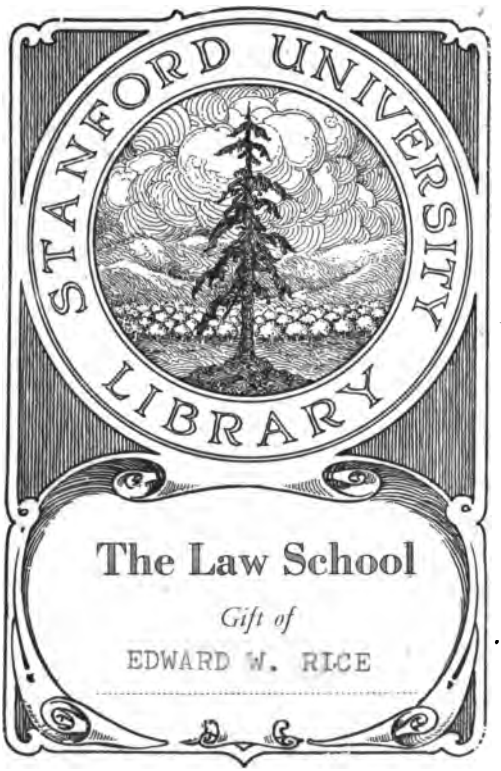
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THE

LAW OF BILLS OF EXCHANGE,

Promissory Notes,

BANK-NOTES, BANKERS NOTES,

DRAFTS, AND CHECKS.

CONTAINING

ALL THE STATUTES, CASES AT LARGE,

CUSTOMS OF MERCHANTS,

AND

DECISIONS IN THE COURTS OF LAW AND EQUITY,

ON THOSE VERY IMPORTANT SUBJECTS;

To Trinity Term, 1801.

INCLUDING THE

ARGUMENTS in the Cafe of *Lawſon* and others, *v. Weſton* and others,

IN THE

SITTINGS *before Lord* KENYON *and a* SPECIAL JURY,

In JULY, 1801.

When some essential Information occurred respecting Country Banks,
And their very extraordinary Multiplication.

TOGETHER WITH

The accumulated STAMP DUTY on the respective Sums,
Down to the last Act of 41 G. III. c. 10, inclusive.

BY *EDWARD WINDHAM MANNING*, ESQ.

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PREFACE.

PAPER is now become the grand currency in commercial dealings, and an ample ſubſtitute for caſh; inſomuch that it has almoſt ſuperſeded the circulation of ſpecie. We are convinced of the propriety of what has been aſſerted by a certain exalted character, "That we eat and drink paper, and live upon paper." It is therefore eſſentially neceſſary for us to be acquainted with the laws, by which that ſubſtitute or medium for money is to be regulated.

Bills of Exchange, Promiſſory Notes, Bank-Notes, Bankers' Notes, Drafts, and Checks, being, to many purpoſes, conſidered as Money; a code of Law, and the cuſtom of merchants, reſpecting their regulation and proper uſe, ſeems highly neceſſary; and more particularly ſo, as there are a great number of modern deciſions on certain points, which are abſolutely requiſite, from time to time, to be introduced into that code. New difficulties on this ſubject are continually ſtarting for diſcuſſion and deciſion; the reſult of which it is important to regiſter or record, that recourſe may at all times be had to ſuch a fountain of intelligence.

Beſides

Beſides the Statutes and Reports which have been promulgated upon theſe ſubjects, we have conſulted all the modern Treatiſes that we ſuppoſed might probably afford us any uſeful hints relative to theſe ſubſtitutes for ſpecie; and we acknowledge to have enriched our performance by ſome of their communications. Our thanks are particularly due to STEWART KYD, JOHN BAILEY, and JOSEPH CHITTY, Eſqrs. for the information we have drawn from their ingenious labours.

The Law of

BILLS OF *EXCHANGE*,

PROMISSORY NOTES,

BANK-NOTES, BANKER's NOTES,

DRAFTS, *AND CHECKS.*

CHAP. I.

Of the Origin, Antiquity, and various Kinds of Exchanges.

Origin of exchanging one commodity for another.

AT a very early period, nature pointed out the ſimple mode of bartering or exchanging one commodity for another, by a vague and inaccurate eſtimation of their reſpective values. The inconvenience and uncertainty of this kind of traffic occaſioned the introduction of a common ſtandard, under the denomination of money, to which every thing elſe ſhould be referred as its meaſure or criterion.

Progreſs from barter to money.

The progreſs of mankind, from barter of commodities to the invention of money, in the common tranſactions of life, muſt have been very rapid, for we find Abraham giving "400 ſhekels of ſilver *current money with the merchant*," for the field of Machpelah. *Gen. c.* xxiii. *v.* 16.

Exchange of money.

The exchange of money is of great antiquity, as appears from the Hebrew cuſtoms, as well as from thoſe of the Romans.

On the firſt day of the month Adar, which anſwers to our February, proclamation was made throughout all Iſrael, that the people ſhould provide their half ſhekels, (an antient Jewiſh coin equal to about 2*s.* 6*d.* ſterling,) which were yearly paid towards the ſervice of the temple, according to the commandment of God. On the 25th of Adar they brought tables into the outer court of the

temple where the people ſtood. *Exod.* xxx. 31. On theſe lay the leſſer coins, which were to furniſh thoſe who wanted half ſhekels for their offerings, or who wanted ſmaller pieces of money in their payment for oxen, ſheep, doves, *&c.* which ſtood there ready in the ſame court to be ſold for ſacrifices. But this mode of ſupply, and furniſhing the people from theſe tables, was not without an exchange for other money, or other things in lieu of money, and that at an advantage. Hence alſo thoſe who ſat at the tables were called bankers, or maſters of the exchange. *Molloy, lib.* 2. *c.* 10. *f.* 1.

How long in uſe among the Romans

By the Romans the exchange of money is ſuppoſed to have been in uſe upwards of two thouſand years; money being then fabricated out of gold and ſilver, to avoid the carriage of merchandizes in barter from one country to another. So other nations, imitating the Jews, and Romans, erected mints and coined monies. *Molloy, lib.* 2. *c.* 10. *f.* 2.

Bills of exchange introduced by the Jews.

But it was reſerved for an oppreſſed people, conſidered as the outcaſts of mankind, urged by the neceſſity of their ſituation, to introduce a method by which the merchants, of regions the moſt remote from each other, could convey the means of procuring the value of their commodities, without the inconvenience of tranſporting gold or ſilver. About the middle, or towards the end of the thirteenth century, the Jews, driven by the exactions of the prince, from England and France, took refuge in Lombardy, and from thence gave to merchant ſtrangers and travellers, ſecret letters on thoſe to whom they had entruſted their effects in the former countries; who honourably diſcharged the truſt repoſed in them, by complying with the orders contained in the letters.—In the courſe of time theſe letters received a form, and had conferred on them the name of *Bills of Exchange. Monteſquieu, lib.* 21. *c.* 16. *Kyd's Treatiſe, c.* 2. *p.* 2.

Further obſervations on the introduction of bills of exchange.

Some authors have attributed the invention to the Florentines, when, being driven out of their country by the faction of the Gebelins, they eſtabliſhed themſelves at Lyons and other towns. On the whole, however, there is no certainty on the ſubject, though it ſeems clear that foreign bills were in uſe in the fourteenth century, as appears from a Venetian law of that period; and an inference drawn from the ſtatute 5 *Rich. II. f.* 1, 2. warrants the concluſion that foreign bills were introduced into this country

country previous to the year 1381. *Claxton* v. *Swift.* 2 *Show.* 485.

When univerſally adopted.

The mode of tranſmitting money from one country to another, by means of theſe inſtruments, being once diſcovered, the advantages derived from it ſoon induced merchants univerſally to adopt it; and from thence it early grew into cuſtom, which ſeems to have been judiciouſly ſanctioned in this country at a very early period of our hiſtory, though no earlier deciſion relative to the cuſtom can be found than that in 10 *Jac. I.* where it was adjudged, that an *acceptance* raiſed an *aſſumpſit* in law, for the breach of which an action on the caſe would lay. *Caſte* v. *Taylor. Cro. Jac.* 306. 1 *Rol Abr.* 6.

Perſons in general competent.

It was once ſuppoſed that no perſon, who was not a merchant, or engaged in ſome trade, could be party to a bill; but it has been long ſettled that all perſons, having capacity and underſtanding to contract in general, may be concerned in the negotiation of theſe inſtruments. *Carth.* 282. *Salk.* 125.

Of the parties.

The perſon who writes the bill is called in law the *drawer*; and he to whom it is addreſſed the *drawee*; the third perſon, or negotiator, to whom it is payable, whether ſpecially named, or the *bearer* generally, is called the *payee.* When a bill or note is indorſed, the perſon indorſing it is called the *indorſer*; the perſon to whom it is indorſed the indorſee. *Black. Com.* 11, 466.

To whom a bill can be made payable.

A bill or note cannot be made payable to any perſon who is incapable of ſuing for its payment. It cannot properly be made or indorſed by, nor can a bill be properly addreſſed to any perſon incapable of making himſelf reſponſible for the payment.

CHAP. II.

Of Bills of Exchange, and Promiſſory Notes.

Of bills of exchange.

A BILL of Exchange, ſays Savary, is a piece of paper commonly long and narrow, on which is written a ſhort order, given by a banker, merchant, trader, or other perſon, for paying to ſuch a perſon, or to his order, and alſo, in ſome countries, to the bearer in a diſtant place,

a ſum of money equivalent to that which ſuch banker, merchant, or trader has received in his dwelling place. *Savary's* Dict. tit. Lettre de Change.

Form not eſſential. The form, however, is not an eſſential part of it, for the ſame ſtrictneſs and nicety are not required in penning bills current between merchant and merchant, as in deeds, wills, &c. *New Abr.* 606.

Nor particular words. No particular words are neceſſary to make a *bill or note*; any order or promiſe, which from the time of making it cannot be complied with or performed without the payment of money, is a bill or a note. In the caſe of *Morris v. Lea*, plaintiff ſued as indorſee upon a note by which the defendant promiſed to be accountable to *A*, or reſponſible for it to him or order, is a *good bill or note. Lord Raym.* 1896. *Str.* 629. 8 *Mod.* 362.

Muſt be in writing. It is requiſite that bills of exchange and notes ſhould be in writing, and drawn by the party, or thoſe having legal authority from him; and ſuch drawing raiſes a contract to pay the ſame, without reference to any other tranſaction, promiſe, or obligation between the parties, whereby a pretence may be made for diſhonouring the bill when due. 3 *New Abr.* 606. *Garth.* 510.

Contracts of infants void, and of married women voidable. With reſpect to the competency of the contracting parties, the law has in general rendered the contracts of infants *voidable*, and thoſe of married women abſolutely void. Theſe privileges and protections are given as ſhields and not as ſwords, and therefore infants may contract for neceſſaries; for they would otherwiſe be in worſe circumſtances than perſons of full age. *Burr.* 1801. 2 *Atk.* 35.

Of infants. It may however be doubtful whether a bill of exchange given by an infant for neceſſaries, would have the uſual operation of that inſtrument againſt him; for although it has been decided that a ſingle bond, or bond without a penalty, will bind an infant, when given for neceſſaries; yet if a bill of exchange, conſidered as a contract, were to have an obligatory force on an infant, it might, from its aſſignable quality, when in the hands of a third perſon, preclude the infant from diſputing the value of the neceſſaries, and operate like the ſtatement of an account, which it has been adjudged will not bind him. *Aſh. En.* 273. 1 *Rol. Abr.* 729. *p.* 8. *Caſ. in L. and E.* 185.

A promiſe made after age. An infant may, however, by a promiſe to pay the bill, made after he attains twenty-one, render it as operative againſt him as if he had been of age at the time it was made. *Sol. Ca.* 166, 201.

Although

Although it has often been decided that married women may contract so as to bind themselves, provided they live apart from their husbands, and have a permanent maintenance secured to them by deed; yet the authority of these decisions have been questioned of late by high legal authority. 4 *Durnf. & East*, 361, 766. 5 *Durnf. & East*, 679. 6 *Durnf. & East*, 604. *Esp. C. N. P.* 6. But although the drawer, indorser, or acceptor of a bill is incapable of binding himself, such bill will nevertheless be valid against all other competent persons. *Poth. p.* 29. 2 *Atk.* 181, 2. *Chitty*, 20, 21. Of a married woman, living apart from her husband.

A bill of exchange may be defined to be an open letter of request, and a promissory note a written promise, for the payment of money *absolutely*, and at all events; the one owing its existence and privileges to the law and custom of merchants; the other to the 3d. and 4th. *Anne c.* 9. which enacts, that, after May 1, 1705, all notes in writing shall have the same effect as inland bills of exchange. Bills and notes in some respects the same.

A bill or note must purport the money mentioned in it shall be payable absolutely; if it purports to make the payment depend on any uncertainty or contingency, the instrument is not a bill or note. Not to depend upon a contingency.

Thus an order or promise of payment out of the money, *when received*, or the produce of merchandize, *when disposed of*, is no bill of exchange; because of the *uncertainty* whether one will be *received*, or the other *disposed of*; or that its produce, when disposed of, would be sufficient. *Black.* 782. 3 *Wilf.* 207. Or be conditional.

A promissory note to pay money within so many days after the defendant should marry, was, on consideration, held not to be a negotiable note within the statute. 2 *Str.* 115.

So where a bill drawn by an officer on his agent, requiring him to pay so much out of his growing subsistence, was held to be no bill of exchange, nor the drawer liable, though he accepted such bill; for it concerns neither trade or credit, but is to be paid out of the growing subsistence of the drawer: so that if the party die, or the fund be taken away, the payment is to cease and determine. *Lord Raymond*, 1361. Drawn by an officer.

Kingston v. *Long*, *M.* 25 *G. III.* The plaintiff brought an action as indorsee against the defendant as acceptor, upon an order importing to be payable, *provided the terms mentioned in certain letters written by the drawer were complied*

complied with, and the court held clearly that the plaintiff could not recover, though the acceptance admitted a compliance with the terms, for the order was no bill, untill after such compliance; and if it were not a bill when drawn, it could not afterwards become one.

Out of rents. An order to pay a sum out of rents or other money in the hands of the person to whom it is addressed, is no bill, because it may be that he has not rent or other money in his hands sufficient to discharge it. *Str.* 591.

To pay when a person is of age. An order or promise to pay when *A. B.* shall come of age, specifying the day when that event is to happen, is a good bill or note, because it is payable though he die in the interim. As in the case of *Goss* v. *Nelson*. Action on a note payable to an infant, "when he (the infant) should come of age, to wit, 12 June, 1750;" and it was objected in arrest of judgment that it was uncertain whether the money would ever have been payable, because the infant might have died under 21; but the court held it a good note, because it was payable at all events on the 12th June, 1750, though the infant should have died before that time. *Burr.* 226.

Half-pay in advance. An order to pay money as *the drawer's quarter's half-pay by advance* before the pay will be due, is a good bill, because it will be payable though the half-pay shall never become due. *Str.* 762. *L. Raym.* 1481.

Another contingency. An action was brought on the following note "I promise to pay to *T. M.* 50*l.* if my brother doth not pay it within six weeks," and after verdict for the plaintiff the court reversed the judgment, because the maker was only to pay it on a contingency. *Appleby* v. *Biddulph*, 8 *Mod.* 363. 4 *Vin.* 240. *p.* 16.

Bills, &c. must be for money only. Bills and notes must be for the payment of money *only*; an order or promise to pay money, and to *do some other act*, is not a bill or note.—On error from the court of Common Pleas, the court of King's Bench held, that a note to deliver up horses and a wharf, and pay money at a particular day, was not a note within the statute, and reversed the judgment which had considered it as such. *Martin* v. *Chauntry*, *Str.* 1271.

And bills and notes must also be for the payment of money in specie: an order or promise to pay in *good East India bonds* is not a bill or note. A written promise to pay 300*l.* to *B.* or order in three good *East India* bonds, was held not to be a note within the statute. *Bull. Ni. Pri.* 272. *Anon.*

A note

A note was given in these words, "borrowed of *I. S.* 50*l.* which I promise *not* to pay:" and per Lord Macclesfield, the word *not* shall be rejected, for a man shall never say, I am a cheat and have defrauded. Cited by Lord Mans. in *Russel* v. *Langstaffe. M.* 21 *G. III.* A promise *not* to pay.

A note so far resembles a bill that it is for the payment of money absolutely, and at all events, and when transferred it is exactly similar to a bill of exchange. But in the case of *Heylin* v. *Adamson*, it was held by Lord Mansfield, that while a note continues in its original shape of a promise from one man to another, it bears no similitude to a bill; but when it is indorsed, the resemblance begins; for then it is an order by the indorser upon the maker to pay the indorsee, which is the very definition of a bill: the indorser of the note corresponds to the drawer of the bill; the maker to the drawee or acceptor; and the indorsee to the payee, or party to whom the bill is made payable. All the authorities, and particularly Lord Hardwicke in the case of *Hamerton* v. *Mackarell, M.* 10 *G. II.* put promissory notes on the same footing with bills of exchange. *Burr.* 669. Notes becoming similar to bills.

And in *Brown* v. *Harraden*, where the court decided that three days grace should be allowed on promissory notes, Lord Kenyon observed, that the effect of the statute was that notes were wholly to assume the shape of bills; and *Buller* J. added, that the language of the preamble to the act was expressly that it was the object of the legislature to put notes exactly on the same footing with bills. See 4 *Durnf. & East*, 148, and 5 *Durnf. & East*, 482. And considered in the same light.

It has been a point much agitated whether it was necessary that a bill or note should import to have been given for *value received*; but that question was settled in the negative in the case of *White* v. *Ladwick*, K. *B. H.* 25 *G. III.* A declaration on a bill of exchange was demurred to, because it was not stated to have been given for value received; but the court said it was a settled point, that it was not necessary, and gave judgment for the plaintiff. See also *L. Raym.* 1471. The words value received not necessary.

To entitle, however, the holder to recover interest and damages against the drawer and indorsee, in default of acceptance or payment, a bill must contain the words value received: the inserting of these words is therefore in all cases advisable. 9 & 10 *W. c.* 17. 3 & 4 *Anne c.* 9. Except to recover interest against the drawer,

A bill payable at ſight different from one on demand.

A bill payable at ſight is not to be conſidered as a bill payable on demand. *Anſon* v. *Thomas*, T. 24 G. III. In an action on an inland bill, the queſtion was, whether it was included under an exception in the ſtamp act of 23 G. III. c. 49. ſ. 4. in favour of bills payable on *demand*; and the court held it was not; and Buller J. mentioned a caſe before Willes, C. J. in London, in which a jury of merchants was of opinion, that the uſual days of grace were to be allowed on bills payable at ſight. A note or bill *on demand* is payable immediately.

Altering a bill

If while a bill is in the hands of the payee, or other holder, or in any caſe, it is *altered* in any material reſpect, as for inſtance, in the date or ſum, without the conſent of the drawer, it will diſcharge him, although the bill may afterwards come into the hand of an indorſee not aware of the alteration. And if it is altered after acceptance or indorſement, without the acceptor's or indorſer's aſſent, ſuch alteration ſhall have the ſame operation. 4 *Durnf. & Eaſt*, 320. 5 *Durnf. & Eaſt*, 367.

Before acceptance or indorſement.

But if it is altered before acceptance or indorſement, the acceptor or indorſer cannot take any advantage of the alteration; and the conſent of any one of the parties to the alteration, will in general ſtop him from taking advantage of it. In ſuch caſe, however, a new ſtamp will be neceſſary, if the alteration was made after the bill was negotiated, or after it was due. *Bailey's Sum.* 24.

An altered note or bill requires a new ſtamp.

A bill or note altered (though by the conſent of all parties) after it has once iſſued, or after the time when it was originally payable, requires a new ſtamp. In the ſittings after Michaelmas term, 1796, before Lord Kenyon, *Wilſon* v. *Juſtice*, a bill payable originally nine months after date, was, by conſent of all parties, a fortnight after it had been in the hands of the payee, made payable 12 months after date; and Lord Kenyon held that the alteration made a new ſtamp neceſſary, and nonſuited the plaintiff. *Bailey*, 24.

Of drawing, accepting, or indorſing by procuration.

Wherever a man has legally a power, as owner, to do a thing, he may conſequently, as incident to his right, do it by attorney or agent. Hence it is clear that a perſon may draw, accept, and indorſe a bill by his agent as well as by himſelf. In theſe caſes, he is ſaid to draw, accept, or indorſe by *procuration*. As the doing of either of theſe acts is the execution of a mere miniſterial office, infants, feme coverts, perſons attainted, outlawed, excom-

communicated, aliens, and others incapable of contracting in their own right, ſo as to bind themſelves, may be agents for theſe purpoſes. 9 *Co.* 75. *b.* *Molloy*, *b* 2. *c.* 10. 6 *Mod.* 96. 12 *Mod.* 346, 564. 3 & 4 *Anne*, *c.* 9. *ſ.* 1. *Beawes*, *pl.* 83. *Co. Lit.* 52. *a.*

If a perſon ſigns his name upon a blank paper, ſtamped with a bill ſtamp, and delivers it to another perſon to draw ſuch bill as he may chooſe thereon, he is the drawer of any bill to which the ſtamp is applicable which ſuch perſon may draw thereon. *Collis* v. *Emet.* 1 *H. Black.* 313. Emet ſigned his name upon a blank paper ſtamped with a ſhilling bill ſtamp (the higheſt ſtamp then uſed for bills) and delivered it to Liveſay and Co. that they might draw thereon ſuch bill as they ſhould pleaſe. They drew one for 155*l.* at three months date, which was duly transferred to Collis and Co. and Collis and Co. ſued Emet thereon. A ſpecial verdict was found, principally with a view to another point, and the Court held Emet anſwerable, and the plaintiff had judgment. *Bailey's Sum.* 14. Signing a name on a blank paper.

A bill of exchange is to be conſidered as a ſimple contract debt, in a courſe of adminiſtration, which an executor or an adminiſtrator cannot diſcharge before debts by bond, without being guilty of a *devaſtavit*. 3 *New Abr.* 602. Not to be paid by executors, &c. before bonds.

CHAP. III.

Of Foreign Bills of Exchange.

BILLS of Exchange are either *foreign* or *inland*; *foreign* when drawn by a merchant, reſiding abroad, upon his correſpondent in England, or *vice verſa*; and *inland* when both the drawer and the drawee reſide within the kingdom. Formerly foreign bills of exchange were much more regarded in the eye of the law than inland bills, as being thought of more public concern in the advancement of trade and commerce: but now inland bills of exchange are put upon the ſame footing as foreign ones; what was the law and cuſtom of merchants with regard to the one, and taken notice of merely as ſuch, being by Of foreign bills of exchange.

the ſtatutes expreſsly enacted with regard to the other; ſo that there is now in law no manner of difference between them. *Blag.* 4. *Chitty's Tr.* 15.

Inland bills. By various judicial deciſions, and by two ſtatutes enacted on the ſubject, the 9 & 10 *W. III, c.* 17. and the 3 & 4 *Anne, c.* 9. this doctrine ſeems now eſtabliſhed.

A ſet of bills. In the caſe of foreign bills, it is uſual to make three of the ſame tenor and date, in order that the bearer, having loſt one, may receive his money on the other. But if the drawer only gives one, he will, if it ſhould be loſt, be obliged to give another of the ſame tenor to the loſer. Theſe bills of the ſame tener and date, are called a ſet; and each part contains a condition that it ſhall be paid provided the others are not. *Poth. pl.* 39.

Condition to be inſerted in each. The condition ſhould be inſerted in each part, and ſhould in each mention every other part of the ſet; for if a man, intending to make a ſet of three parts, ſhould omit the condition in the firſt, and make the ſecond with a condition mentioning the firſt only, and in the third alone take notice of the other two (as pointed out by Molloy, Malynes, and Marius,) he might perhaps in ſome caſes be obliged to pay each; for it would be no defence to an action on the ſecond, that he had paid the third, nor to an action on the firſt that he had paid either of the others. *Bailey's Tr.* 15. *Chitty's Sum.* 46.

To whom delivered. When a bill thus conſiſts of a ſet, or ſeveral parts, each muſt be delivered to the perſon in whoſe favour it is made, (unleſs one is forwarded to the drawee for acceptance, and in that caſe the reſt muſt be ſo delivered) otherwiſe there may be difficulties in negotiating the bill, or enforcing payment. *New. Abr.* 603. *Molloy, b.* 2. *c.* 10. *ſ.* 10. *Bailey's Sum.* 15.

Name to be properly ſpelled. Care muſt be taken that the name be properly ſpelled; and where there are two perſons of the ſame name, the payee ſhould be deſcribed in ſuch a manner as to prevent any miſtake. 4 *Durnf. & Eaſt,* 28.

Uſance. Though foreign bills are frequently drawn payable at uſance or uſances, yet they, like inland bills, may be drawn payable at ſight, at days, weeks, months, or years, after ſight or date, or on demand: bills, however, are ſeldom drawn payable on demand; but uſually, where it is intended they ſhould be paid immediately, are drawn payable at ſight. When drawn at ſight, the drawer of a foreign bill ſhould mention it to be payable according to the courſe of exchange at the time of making it, or the drawee

drawee must pay according to the exchange of the day when he has ſight of the bill. "*En eſpeces au cour de ce jour.*" *Poth. pl.* 174.

Inſtead of an expreſs limitation by months or days, we continually find the time on bills drawn or payable at certain places limited by the *uſance*, that is, the uſage between thoſe places and this country. Uſance is the time of one, two, or three months after the date of the bill, according to the cuſtom of the places between which the exchanges run. Uſance different in different countries.

As *uſances* vary according to the cuſtoms of different countries, it is always neceſſary that the uſance of the place ſhould be particularly deſcribed; for where the plaintiff declared on a bill of exchange drawn at *Amſterdam*, payable at *London*, at *two uſances*, and did not ſhew what the two uſances were; judgment was given for the defendant, becauſe the court could not take notice of foreign uſances which vary, being longer in one place then in another, unleſs the uſance of that particular country had been ſhewn and proved. 1 *Salk.* 132. The uſance ſhould be particularly deſcribed.

Uſance between London and any part of France, is thirty days after date.—Between London and the following places, one calendar month after the date of the bill, *viz.* Hamburgh, Amſterdam, Rotterdam, Middleburgh, Antwerp, Brabant, Zealand, and Flanders—Between London and Spain and Portugal two calendar months—Between London and Genoa, Leghorn, Milan, Venice, and Rome, three calendar months.—The uſance of Amſterdam, on Italy, Spain, and Portugal, is two months.—On France, Flanders, Brabant, and on any place in Holland or Zealand, is one month—On Frankfort, Nuremberg, Vienna, and other places in Germany, on Hamburg and Breſlau, fourteen days after ſight, two uſance twenty-eight days, and half uſance ſeven. *Kyd's. Tr.* 4. Different uſances particularized.

A double uſance is double the accuſtomed time; an half uſance, half the time. Double uſance.

Where it is neceſſary to divide a month, an half uſance ſhall contain fifteen days, notwithſtanding the inequality in the length of the months. Half uſance.

Where the time, after the expiration of which a bill is made payable, is limited by months, it muſt be computed by calendar, not lunar months: thus, on a bill dated the firſt of January, and payable at one month after date, the month expires on the firſt of February. *Kyd's Tr.* 5 Calendar months.

Of calculating — By the cuſtom of merchants, where a bill is payable at ſo many days after ſight, or from the date, the day of preſentment or of the date is excluded.

Old and new ſtyle. — There are eleven days difference between the old and new ſtyle; or, in other words, the firſt day of any month, according to the *old* ſtyle, is the twelfth according to the *new*. The *old ſtyle* prevails in Muſcovy, Denmark, Holſtein, Hamburgh, Utrecht, Gueldres, Eaſt Friſland, Geneva, the Proteſtant Principalities of Germany, and the Proteſtant cantons of Switzerland. The *new ſtyle* is followed in all the dominions of *George III.* in Amſterdam, Rotterdam, Leyden, Haerlem, Ghent, Bruſſels, Middleburgh, Brabant, and all the Netherlands, except Utrecht and Gueldres. It is alſo obſerved, in France, Spain, Portugal, Italy, Hungary, Poland, the Popiſh Principalities of Germany, and the Popiſh Cantons of Switzerland.

After date. — When a bill, payable after date, is drawn at a place uſing one ſtyle, and remitted to a place uſing the other, the time is computed according to that of the place where drawn.

Sight. — A bill payable after ſight muſt evidently be computed according to the ſtyle of the place where it is payable.

Days of grace allowed in different countries. — By the cuſtom of merchants, a perſon to whom a bill is addreſſed, is allowed a ſhort time for payment, beyond the term mentioned in the bill, called *days of grace*. But the cuſtom of theſe varies, according to the cuſtom of different places. The united kingdoms of Great Britain and Ireland, Vienna, and Bergamo, *three days*. Frankfort, out of the time of the fair, *four days*. Venice, Amſterdam, Rotterdam, Middleburgh, Antwerp, Cologn, Breſlau, Nuremberg, and Portugal, *ſix days*. Leipſic, Naumburg, and Augſburgh, *five days*. Dantzick, Koningſberg, and France, *ten days*. Hamburgh and Stockholm, *twelve days*. Naples *eight*, Spain *fourteen*, Rome *fifteen*, and Genoa *thirty days*. Leghorn, Milan, and ſome other places in Italy, no fixed number. *Kyd's Tr.* 9.

Sunday. — At Hamburgh, but no where elſe, the day on which the bill falls due, makes one of the days of grace. In England, if the third day of grace ſhould happen to be Sunday, the bill is to be paid on Saturday.

Of ſtamping foreign bills. — Though none of our acts of parliament require any ſtamp on a foreign bill made out of this country, yet as the courts will take notice of the revenue laws of a foreign country, and will reſort to the laws of the country in

which the inſtrument was made, every bill muſt be ſtamped as required by the laws of the country where made, or otherwiſe the holder cannot recover upon it. *Alves* v. *Hodgſon*. 7 *Durnf. & Eaſt, Eſp. Ca. Ni. Pri.* 528.

If a holder of a foreign or inland bill of exchange, or check, transferable by *mere delivery*, loſes or is *robbed* of it, and it gets into the hands of a perſon who was not aware of the loſs or robbery, for a good conſideration, previouſly to its being due; ſuch perſon, notwithſtanding he derived his intereſt in the inſtrument from the perſon who found or ſtole it, may maintain an action againſt the acceptor, or other parties to the inſtrument; and the original holder who loſt it will forfeit all right of action. *Good.* v. *Col.* 4 *Durnf. & Eaſt*, 825. *Doug.* 633. *Chitty's Tr.* 124. Loſing or being robbed of a bill.

CHAP. IV.

Of Acceptance.

THE term acceptance applies only to bills, for a note may be conſidered on compariſon with a bill, as accepted when it iſſues. 2 *Black. Com.* 470. Therefore nothing under this head is applicable to promiſſory notes. Acceptance what.

An acceptance is an engagement to pay a bill according to the tenor of the acceptance, and a general acceptance is an engagement to pay according to the tenor of the bill. And by the cuſtom of merchants, an acceptance as effectually binds the acceptor, as if he had been the original drawer; and, having once accepted it, he cannot afterwards revoke it. *Cro. Jac.* 308. *Bailey's Sum.* 42. Is an engagement to pay.

Acceptance may either be written or verbal; if the former, it may either be on the bill itſelf, or in ſome collateral writing. In an action againſt the acceptor of a foreign bill of exchange, it appeared that the acceptance was by a letter, in which the defendant ſaid, I will pay it, if you firſt let me ſend to my correſpondent in Ireland. This was held as well as if the acceptance had been on the bill itſelf. *Wilkinſon* v. *Lutwidge*, 1 *Str.* 648. May be written or verbal.

It

Written or parol acceptance.

It may be *verbally*, or in *writing*. On account of the ambiguity of the ſtatutes, 9 & 10 *W. III. c.* 17, and 3 & 4 *Anne c.* 9. it has formerly been ruled that an acceptance by parol was not ſufficient. But that point is now finally ſettled by a ſolemn determination in the King's Bench in the time of Lord Hardwicke. In an action againſt the defendant as acceptor of a bill, the acceptance appeared to be by parol only; which Lord Hardwicke, C. J. ruled to be ſufficient; but *Eyre*, C. J. of the Common Pleas having ruled it otherwiſe, in *Rex.* v. *Meggott*, *H.* 7 *G. II.* an application was made for a new trial, and the court to ſettle the point ordered it to be argued: upon the argument the court held Lord Hardwicke's directions right, and Eyre, C. J. waived his opinion and agreed with the court of King's Bench. And this determination is referred to and approved in *Julian* v. *Shobrooke*, 2 *Wilſ.* 9. and *Powell* v. *Monnier*. 1 *Atk.* 612.

Lord Mansfield ſays a verbal acceptance is binding; and in *Sproat* v. *Matthews*, it was taken for granted by the court and bar, that a parol acceptance was good. 1 *Durn. & Eaſt*, 182. See alſo *Str.* 817.

What amounts to an acceptance.

A very ſmall matter will amount to an acceptance, and any words, except thoſe which put a negative on the requeſt will be ſufficient: as *accepted*, or *accepted by me A. B.* or *acc.* or *I accept the bill.* Or if the party underwrites the bill, *preſented* ſuch a day, or only the day of the month, this is ſuch an acknowledgement of the bill as amounts to an acceptance. 3 *New. Abr.* 610. *Comb.* 401.

A direction to a third perſon to pay a bill is a complete acceptance.

Date to acceptance.

Where it is an acceptance of a bill payable after ſight, it is uſual to write the day on which the acceptance is made. When it is made by one partner only, on the partnerſhip account, it ſhould expreſs that he accepts for ſelf and partner; and when by an agent for his principal, it is uſual and neceſſary for him to ſpecify that he does it as agent, as otherwiſe it will make him perſonally reſponſible. 1 *Str.* 955.

What amounts to an acceptance.

If the party ſays, "leave your bill with me, and I will accept it," or, "call for it to-morrow and it ſhall be accepted:" theſe words, according to the cuſtom of merchants, as effectually bind, as if he had actually ſigned or ſubſcribed his name according to the uſual manner.

But

But if a perſon ſays, "leave your bill with me, and I will look over my accounts and books between the drawer and me, and call to-morrow, and accordingly the bill ſhall be accepted:" This does not amount to a complete acceptance; for the mention of his books and accounts ſhews plainly that he intended only to accept the bill, in caſe he had effects of the drawers in his hands; and ſo it was ruled by Lord Chief Juſtice Hale. *Molloy, b. 2. c. 10. ſ. 20.* What does not,

A modern reporter of ſome authority informs us that, an expreſs refuſal to accept, written on a bill, is an acceptance. In *Anne 75*, is this note. *Underwriting, or indorſing the bill thus*, I will not accept this bill, is held by the cuſtom of merchants a good acceptance. But by Lord Mansfield in *Peach* v. *Kay*, in ſittings after Trinity Term 1781, it was held by the judges, that "an expreſs "refuſal to accept written on the bill, where the drawee "apprized the party who took it away what he had writ-"ten was no acceptance; but if the drawee had intended "it as a ſurprize on the party, and to make him conſider "it as an acceptance, they ſeemed to think it might have been otherwiſe." *Bailey's Sum.* 48. A written refuſal to accept.

An acceptance may be implied as well as expreſſed: thus it may be inferred, from the drawee's keeping the bill a great length of time, or by any other act which gives credit to the bill, and induces the holder not to proteſt it, or is intended as a ſurprize upon him, and to induce him to conſider the bill as accepted. *Buller's Ni. Pri. Chitty's Tr.* An implied acceptance.

A promiſe to accept a bill of exchange, is the ſame as an actual acceptance; it will bind though the acceptor has no effects in hand, and without conſideration. *1 Str.* 648. A promiſe to accept.

An agreement to honour a bill of exchange is virtually an acceptance.

A *promiſe* to accept at a *future* period, whether made to the drawer or not, as for inſtance, a promiſe contained in a letter, to accept ſuch bills as the plaintiff ſhould draw on the defendant at a future day, on account of a debt due from a third perſon to the plaintiff, will in all caſes operate againſt the perſon making it, as an abſolute acceptance. *Burr. 1672. Cowp. 571.* A promiſe to accept.

A verbal promiſe to accept a returned bill when it ſhall come back, is binding if it do come back. *Cox* v. *Coleman.*

But

But an agreement to accept on certain conditions, is diſcharged, if the conditions are not complied with. 2 *Doug.*

Acceptance may differ from the tenor of the bill.

An acceptance may be for a leſs ſum than that mentioned in the bill: or it may be at an enlarged period, which is uſually the caſe when a merchant on whom a bill is drawn has no effects of the drawer in his hands, and does not ſuppoſe he ſhall have any at the time of payment mentioned in the bill. 1 *Str.* 214. *Kyd's Tr.* 74.

To pay in future.

A drawee may accept a bill which has no time mentioned for the payment, and which is held payable at ſight, to pay at a diſtant period, and ſuch acceptance will bind him. 11 *Mod.* 190.

Conditional acceptance.

If the drawee of a bill is deſirous not entirely to diſhonour it, he may make ſuch an acceptance as will ſubject him to the payment of the money only on a contingency, in which caſe the acceptance is called *conditional*, as "to pay when certain goods conſigned to the acceptor, and for which the bill is drawn ſhall be ſold;" for it would effect trade if factors were not allowed to uſe this caution when bills are drawn on them, before they have an opportunity of diſpoſing of the goods. *Smith* v. *Abbot.* 2 *Str.* 1152.

An anſwer that the bill would not be accepted till a navy bill was paid, was held a conditional acceptance to pay, when the navy bill ſhould be diſcharged. *Pierſon* v. *Dunlop. Cowp.* 571.

The condition muſt be expreſſed

If the acceptance be in writing, and the drawee intend that it ſhould only be conditional, he muſt be careful to expreſs the condition in writing as well as the acceptance; for if the acceptance ſhould, on the face of it, appear to be abſolute, he cannot take advantage of any verbal condition annexed to it. *Doug.* 286. *Kyd's Tr.* 78.

Per Lord Mansfield, if an agreement to accept is conditional, and a third perſon takes the bill knowing of the conditions, he takes it ſubject to them. *Doug.* 286, 289.

Partial acceptance.

A *partial* acceptance, is alſo an acceptance varying from the tenor of the bill, as where it is made to pay part of the ſum for which the bill is drawn, or to pay at a different time or place. 1 *Str.* 214. *Comb.* 458. *Molloy*, 283.

Illuſtration.

Wegerſtoff v. *Keene.* A foreign bill for £127 18*s.* 4*d.* was drawn on the defendant, and he accepted it to pay 100*l.* part thereof: he was ſued from this acceptance, and on demurrer to the replication, inſiſted that a partial acceptance

was

was not good within the cuſtom of merchants; but the court held otherwiſe, and judgment was given for the plaintiff. *Str.* 214.

It may likewiſe vary from the tenor, in the manner in which the acceptor undertakes to pay the bill; as for inſtance, part in money, and part in bills. In either of theſe caſes, the holder, if he means to reſort to the other parties to the bill in default of payment, ſhould give notice to them of ſuch conditional or partial acceptance. *Mar.* 68, 85. To pay part in money.

But what is an abſolute or a conditional acceptance is a queſtion of law to be determined by the court, and is not to be left to the jury. 1 *Durnf. & Eaſt*, 182. A conditional acceptance becomes abſolute as ſoon as its conditions are performed.

If a bill of exchange is not accepted, an action will immediately lie againſt the drawer, before the time when it is made payable. When not accepted.

If a bill is forged the indorſer will be liable. Two forged bills were drawn upon the plaintiff, which he accepted and paid; on diſcovering the forgery, he brought this action for money had and received to recover back the money, but on a caſe reſerved, the court held it would not lie; and Lord Mansfield ſaid, "It was incumbent on him to have been ſatisfied before he accepted or paid them, that the bills were the drawer's hand." *Burr.* 1325. And in *Smith* v. *Cheſtor*, Buller J. ſaid, "When a bill is preſented for acceptance, the accepter looks to the handwriting of the drawer, which he is afterwards precluded from diſputing, and it is on that account that he is liable, even though the bill is forged." 1 *Durnford & Eaſt*, 655. Accepting a forged bill.

Acceptance may be made even after the time appointed for payment of the bill, ſo as to bind the acceptor, though it would diſcharge drawer and indorſers, unleſs due notice of non-acceptance or non-payment at the time the bill became due, was given; and in ſuch caſe, the acceptor would be liable to pay the bill on demand. 12 *Mod.* 410. *Lord Raym.* 364, 574. *Com.* 75. Acceptance after time of payment.

If *A.* draws a bill on *B.* and *B.* will not accept it, and *C.* offers to accept for the honour of the drawer, the holder need not acquieſce, but if he does *C.* is bound. *L. Ray.* 575. 12 *Mod.* 410. And per Lord Mansfield and Yates, J. an acceptance for the honour of the drawer will bind the acceptor. *Burr.* 1672, 1674. Acceptance for the honour of the drawer.

Acceptance for the honour of the drawer.

If a perſon on whom the bill is drawn refuſes to accept it, any third perſon after proteſt for non-acceptance may accept *ſupra* proteſt for the honour of the bill or of the drawer, or of any particular indorſor: if he accept for the honour of the bill or of the drawer, he is bound to all the indorſees as well as the holder: if in honour of a particular indorſor, then to all the ſubſequent indorſees. *Beawes*, 456. *Kyd's Tr.* 153.

On a written acceptance by any other than the drawee, it ſhould ſeem eſſential that his name ſhould appear. *Bailey's Sum.* 48.

CHAP. V.

Of Protests.

Proteſt what

A PROTEST is only to ſubject the drawer to anſwer in caſe of non-acceptance or non-payment, nor does the ſame diſcharge the party-acceptor, if once accepted; for the payee, or perſon to whom payable, hath now two remedies, one againſt the drawer, and the other againſt the acceptor. *Molloy, b.* 2. *c.* 10. *ſ.* 17.

Its uſe.

A proteſt does not raiſe any debt, but only ſerves to give formal notice that the bill is not accepted, or accepted and not paid; and this by the common law was and is ſtill neceſſary, on every foreign bill before the drawer can be charged; but it was not required on any inland-bill before the ſtatute 9 & 10 *W. III, c.* 17. Nor does the want of it ſince that ſtatute deſtroy the remedy which the party had before againſt the drawer for the principal. 3 *New. Abr.* 612.

Difference between inland and foreign bills.

In the manner in which notice either of non-acceptance or non-payment is given, there is a remarkable difference between inland and foreign bills: in the former, no particular form of words are neceſſary to entitle the holder to recover againſt the drawer or indorſers the amount of the bill on failure of the drawee or acceptor; it is ſufficient if it appear that the holder means to give no credit to the latter, but to hold the former to their reſponſibility. 1 *Durnf. & Eaſt*, 170.

Uſe of proteſting inland bills.

A proteſt upon an inland bill is never neceſſary where the bill is for the payment of leſs than twenty pounds;

and on such as are for the payment of more, a neglect to procure it only precludes the holder from recovering, against the persons entitled to notice and special damages or costs occasioned by the non-acceptance or non-payment, and interest. See 3 & 4 *Anne c.* 9.

But by the 9 & 10 *W. III. c.* 17. there is this exception, that such protest may be made on the non-acceptance of an inland bill, if such bill is for the payment of five pounds and upwards within a limited time after date, and the value is expressed therein to have been received, or after an acceptance written on such a bill, for its non-payment. Exception.

But a protest cannot properly be made on any other inland bills. *Leftley* v. *Mill.* 4 *Durnf.* & *East*, 170.

On a refusal to accept an *inland* bill, no protest is required, any act signifying the refusal of the drawee being sufficient. 6 *Mod.* 80. *L. Raym.* 992.

In foreign bills certain formalities are required: if the person to whom the bill is addressed, on presentment, will not accept it, the holder is to carry it to a person vested with a public character, who is to go to the drawee and demand acceptance in the same manner as before, and if he then refuse, the officer is there to make a minute on the bill itself, consisting of his initials, the month, the day, and the year, with his charges for minuting. He must afterwards draw up a solemn declaration, that the bill has been presented for acceptance, which was refused, and that the holder intends to recover all damages which he, or the deliverer of the money to the drawer, or any other, may sustain on account of the non-acceptance: the minute is termed the *noting* of the bill, the solemn declaration the protest, and the person whose office it is to do these acts a *Public Notary*; and to his protestation all foreign courts give credit. *Mal.* 264. *Mar.* 16. Formalities required in foreign bills.

The *noting* is unknown in the law as distinguished from the protest; it is merely a preliminary step to it; and though it has grown into practice within these few years, it will not in any case supply the place of it. 2 *Durnf.* & *East*, 713. *Buller's Ni. Pri.* 271. Notice is only preliminary.

The demand is the material thing which must be made by a notary public, to whom credit is given because he is a public officer, and it cannot be made by his clerk, or by any other than the notary himself. The protest, though mere matter of form, is by the custom of merchants indispensibly requisite wherever notice must be A demand is material.

given; and, it is ſaid, is part of the conſtitution of a foreign bill; nor can it be ſupplied by witneſſes, or oath of the party, or any other way. 4 *Durnf. & Eaſt.* 175. *Lord Raymond*, 993. *Buller's Ni. Pri.* 271. *Chitty's Tr.* 91.

A copy of the bill is neceſſary.

Where there is no notary public to make out ſuch proteſt, it may be made out by any ſubſtantial inhabitant of the place, in the preſence of two or more witneſſes. A copy of the bill muſt be prefixed to all proteſts, with the indorſements tranſcribed *verbatim*, with an account of the reaſons given by the party why he does not honour the bill. 37 *G. III. c.* 90.

The form of the proteſt muſt always be conformable to the cuſtom of the country where it is made. *Poth. pl.* 155.

Stamp.

Proteſts made in this country muſt, in order to their being received in evidence, be written on paper ſtamped with a *four* ſhilling ſtamp.

Proteſt to be made in regular hours.

The *proteſt* muſt be made within the regular hours of buſineſs, and in ſufficient time to have it ſent to the holder's correſpondent by the very next poſt after acceptance refuſed; for if it be not ſent by that time, with a letter of advice, the holder will be conſtrued to have diſcharged the drawee and the other parties entitled to notice: and *noting* alone is not ſufficient, there muſt abſolutely be a proteſt to render the preceding parties liable. *Buller's Ni. Pri.* 271. 2 *Durnf. & Eaſt*, 713.

But it has been recently adjudged that a copy of the proteſt need not be ſent with the notice of non-acceptance. *Eſp. ca. Ni. Pri.* 512. *Buller's Ni. Pri.* 271.

Neither is it proper that the holder ſhould ſend the bill itſelf to his correſpondent, he muſt retain it, in order to demand payment of the drawee when it becomes due.

Loſing a bill of exchange.

If a bill be left with a merchant to accept, which is loſt or miſlaid, he to whom it is payable is to requeſt the merchant to give him a note for the payment, according to the time limited in the bill; otherwiſe there muſt be two proteſts, the one for non-acceptance, and the other for non-payment, and though ſuch note be given, yet if the merchant happens to fail, there muſt be a proteſt for non-payment in order to charge the drawer. 3 *New. Abr.* 613.

Proteſt for better ſecurity.

Beſide the proteſt for non-acceptance, and non-payment, there may alſo be a proteſt for better ſecurity: this is uſual when a merchant, who has accepted a bill, happens to become

come inſolvent, or is publicly reported to have failed in in his credit, or abſents himſelf from 'Change before the bill he has accepted becomes due, or when the holder has any reaſon to ſuppoſe it will not be paid: in ſuch caſe he may cauſe a notary to demand better ſecurity, and on that being refuſed, make proteſt for want of it; which proteſt muſt as in other caſes, be ſent away by the next poſt, that the remitter or drawer may take the proper means to procure better ſecurity. *Mar.* 27. 1 *Lord Raym.* 743. *Kyd's Tr.* 139.

Uſe of a proteſt on inland bills.

The proteſt for non-acceptance in the caſe of an inland bill, being, as has been already obſerved, merely the means of entitling the holder to an accumulative remedy for intereſt, damages, &c. and the want of it not deſtroying the holder's right to the principal ſum, as it would in the caſe of a foreign bill, it need not be made; and, as it is ſaid, is in point of practice very ſeldom made; but notice muſt be given of the non-acceptance, otherwiſe the holder takes the riſk upon himſelf.

Remarks on 9 & 10 *W. III. c.* 19, and 4 *Anne c.* 9.

The ſtatutes 9 & 10 *W. III. c.* 19, and 3 & 4 *Anne c.* 9. are in many reſpects obſcure, and the comments on them in many of the early reporters equally ſo. It was ſoon diſcovered from the general wording of both, that the holder might, notwithſtanding theſe ſtatutes (by giving a reaſonable notice without proteſt) recover againſt the acceptor, the drawer, or indorſor, the amount of the original bill; for that the word *damages*, in theſe acts, does not mean the original ſum, that being recoverable before, but the loſs accruing from the delay. *Kyd's Tr* 146.

What is a ſufficient notice.

With reſpect to what is a ſufficient notice, it ſeems that both in the caſe of a foreign and an inland bill, ſending notice by the poſt is ſufficient, even though the letter ſhould miſcarry, and where there is no poſt, it is ſufficient to ſend by the ordinary mode of conveyance. *Saunderſon* v. *Judge*. The holder of a note wrote to the defendant, who was one of the indorſers, to ſay it was diſhonoured, and put the letter in the poſt, but there was no evidence that it ever reached the defendant; and the court held that ſending the letter by the poſt was quite ſufficient. 2 *H. Bl.* 509.

In the caſe of a foreign bill it is ſufficient to ſend it by the firſt regular ſhip bound to the place to which it is to be ſent. 2 *H. Bl.* 565

Jury to determine.

What ſhall be deemed a reaſonable time, muſt depend upon the particular circumſtances of each caſe, and it muſt

muſt always be for the jury to ſay whether there has been an improper delay. *Per Eyre*, C. J. *H. Bl.* 569.

Reſpecting *date* and ſight.

In foreign bills, there is no diſtinction between thoſe payable at ſuch a time after *date*, and after *ſight*; but the ſtatute confines the benefit of proteſt on inland bills to thoſe payable after *date*; ſo that in ſtrictneſs there can be no proteſt on thoſe payable after ſight: and this has been lately ſo adjudged. *Kyd's Tr.* 149.

A proteſt may be made on the non-payment of coal-notes, given purſuant to 3 *G. II. c.* 26. *ſ.* 7.

Parties reſiding in the place.

To ſuch of the parties as reſide in the place where the preſentment was made, the notice muſt be given, at the fartheſt, by the expiration of the day following the failure; to thoſe who reſide elſewhere, by the next poſt. *Mar.* 2d. *Ed. p.* 24.

The reaſon of proteſt and notice.

The reaſon why proteſt and notice are required, is merely that the parties from whom the owner received the bill, may immediately call on thoſe who are liable to them for an indemnity; we may therefore infer, that it would be perfectly immaterial from whom the notice of non-acceptance is received, provided it be brought home to the knowledge if the party entitled to inſiſt on the want of it. *Chitty's Tr.* 97.

Where an inland bill is proteſted for non-acceptance, if the proteſt or notice thereof is not ſent within fourteen days after it is made, the drawer or indorſer will not be liable to damages, *&c.* under the 3 & 4 *Anne*, *c.* 9. *ſ.* 5.

Proteſts for non-payment.

If, on preſentment for *payment*, the perſon who ought to pay the bill refuſes ſo to do, it is in general incumbent on the holder immediately to *proteſt* it, if the bill was foreign; and whether foreign or inland, to give notice of the diſhonour to thoſe parties to whom he means to reſort for payment, or they will be diſcharged from their reſpective obligations. The obſervations relative to notice of *non-acceptance* are ſo immediately applicable to thoſe of *non-payment*, that it will be unneceſſary to mention when ſuch notice is requiſite, or by or to whom it ſhould be ſent *Chitty's Tr.* 259.

Muſt be ſtamped.

The proteſt for non-payment of a foreign bill, which is made by a notary public, varies in point of form, according to the country in which it is made. In England it muſt be ſtamped with a four ſhilling ſtamp: it ſhould not bear date before the bill is due, but as it muſt be made on the

the laſt day of grace, it may generally bear date on that day. *Mar.* 103. 6 *Durnf. & Eaſt*, 212.

In general, no perſon ſhould pay in honour of another perſon, before the bill has been proteſted for non-payment; and it is ſaid that he ſhould not even then make payment before he has declared to a notary public for whoſe honour he intends making it; of which declaration the notary muſt give an account to the parties concerned, either in the proteſt itſelf, or in a ſeparate inſtrument. *Beawes*, *pl.* 53. *Mar.* 128. Honouring another's bill.

Proteſts are abſolutely neceſſary in caſe the drawee cannot be found; and notice of ſuch proteſt for non-acceptance and non-payment muſt be given to the drawer in a reaſonable time, for though the drawer is bound to the party, to whom the bill is payable, till payment be actually made, yet it is with this condition and proviſo, that proteſt ſhall be made in due time, and a lawful and ingenuous diligence uſed for the obtaining payment of the money; and the reaſon thereof is, that the drawer might have had effects, or other means of his upon whom he drew, to reimburſe himſelf the bill, which ſince, for want of timely notice, he hath remitted or loſt, and it were unreaſonable the drawer ſhould ſuffer through his neglect. 3 *New. Abr.* 613. When the drawee cannot be found.

If a bill be drawn upon *A*, and he accepts it, and afterwards refuſes payment, upon which the bill is proteſted, the perſon to whom it is payable may bring ſeveral actions againſt the acceptor and drawer; for the proteſt is no diſcharge of the acceptor. 3 *New. Abr.* 607. Proteſt no diſcharge of the acceptor

With reſpect to the ſum which the drawer and indorſers are bound to pay, they are liable, where a bill has been proteſted, not only to the payment of the principal ſum, but likewiſe to damages, intereſt, &c. 8 & 9 *W. III*, 4 *Anne c.* 9.

CHAP.

CHAP. VI.

Of Indorsements,

Or the Tranſfer of Bills and Notes.

Indorſement what.

INDORSEMENT is a term known in law, which by the cuſtom of merchants, tranſfers the property of the bill or note to the indorſee; and it is uſually made on the back of a bill, and muſt be in writing; but the law hath not appropriated any ſet form of words as neceſſary to this ceremony; and therefore if a man write his name on the back of a bill of exchange, or *this is to be paid to I. S.* or *pay the contents to I. S.* and ſigns his name to it, this is a good indorſement. 3 *New. Abr.* 613. *Blag.* 11.

Signature only.

The mere ſignature of the indorſer is in general ſufficient. 12 *Mod.* 192, 244, *Salk.* 126, 128, 130.

But by the 17 *G. III. c.* 30. *ſ.* 1, the indorſement of a bill or note for the payment of leſs than five pounds, muſt mention the name and place of abode of the indorſee, and bear date at or before the time of making it; and muſt be atteſted by one ſubſcribing witneſs.

Indorſer becomes a new drawer.

The perſon making an indorſement, is called the indorſer; the perſon to whom it is indorſed, is called the indorſee. If a bill or note be paid or transferred over to another perſon, by *delivery* only, the perſon paying it ceaſes to be a party to ſuch bill or note; but, if he indorſes it, he becomes to all intents and purpoſes a new drawer. *L. Raym.* 181, 930. 2 *Atk.* 182. *Burr.* 670.

Payable to order or bearer.

Bills or notes payable to order, or to bearer, or containing any words to make them aſſignable, may be aſſigned ſo as to give the aſſignee a right upon the bill or note againſt all the antecedent parties; and bills or notes containing no words to make them aſſignable, may be aſſigned ſo as to give the aſſignee a right upon them againſt the aſſignor; but not ſo as to give him a right againſt any of the antecedent parties. *Salk.* 132.

Tranſfer when payable to order.

To the tranſfer of thoſe payable *to order*, it is neceſſary, in addition to delivery, that there ſhould be ſomething by which the payee may appear to expreſs his order. This additional circumſtance is an *indorſement*, ſo called from being uſually written on the *back*, though an order of tranſfer would doubtleſs be equally valid if written at the bottom, or on the face of the inſtrument. *Kyd's Treatiſe*, 28.

An

An indorſement to *the order of a perſon*, is of the ſame force as an indorſement to that perſon, or *his order*, and he may maintain an action on ſuch indorſement in his own name; for among tradeſmen this form is common, though it be intended to be made payable to the perſon whoſe order is mentioned. *Carth.* 403. Indorſement to the order of a perſon.

Indorſements are either in full or in blank: an indorſement which mentions the name of the perſon in whoſe favour it is made, is called a full indorſement; an indorſement which does not, a *blank* one. A blank indorſement, ſo long as it continues blank, makes a bill or note payable to the bearer, but the owner may write over it what he pleaſes. *Blag.* 32. Indorſements in full or in blank.

As long, however, as the firſt indorſement continues blank, the bill or note as againſt the payee, the drawer, and acceptor, is aſſignable by mere delivery, notwithſtanding it may have upon it ſubſequent *full* indorſements. *Peake* 225.

In caſe of a loſs by theft or accident, if the bill or note be transferrable by mere delivery, or blank indorſement, the thief or finder may transfer it; if by a *full* indorſement only, he cannot.

A full indorſement may reſtrain the negotiability of a note.

An indorſement is reſtrictive, which has either expreſs words making it ſo, or is made in favour of a perſon who cannot transfer. Thus an indorſement in theſe words, "pay the contents to *I. S.* only; or to *I. S.* for my uſe or (at leaſt when addreſſed to the drawee) the within muſt be credited to *I. S.*" is reſtrictive. *P. Wilmot*, J. The payee may check the currency of a bill or note, by giving a bare authority to receive the money; as "pay to *A.* for my uſe." *Burr.* 1227. *Black.* 299. And per Lord Hardwicke, in *Snee* v. *Preſcott*, Bills and notes are frequently indorſed in this manner.—"Pray pay the money to my uſe," in order to prevent their being filled up with ſuch an indorſement as paſſes the intereſt. 1 *Atk.* 249. May be reſtrictive.

Blank indorſements are more frequent than thoſe in full, becauſe, if every indorſement were in full, the back of the inſtrument would be ſoon filled up, and its negociability would be leſs extenſive. Blank indorſements more frequent.

When not reſtrained by act of parliament, the transfer may be at any time after the bill or note has iſſued, even after the day of payment, or before acceptance. *Doug.* 611. 3 *Durnf. & Eaſt*, 80.

Fictitious indorſement.

The validity of bills payable to a fictitious payee, have lately been frequently and fully diſcuſſed in our courts of juſtice; the reſult of which diſcuſſion ſeems to be, that a bill payable to a *fictitious* perſon *or his order*, is in effect a bill *payable to bearer*, and may be declared on as ſuch againſt all the parties knowing that the payee was a fictitious perſon. The uſe, however, of theſe fictitious names has been highly cenſured, and the perſon indorſing the fictitious name on the bill, to give it currency, would be guilty of forgery. 3 *Durnf. & Eaſt*, 174, 182, 481. 1 *H. B.* 313. *Chitty's Tr.* 48.

Adopted by the houſe of *Liveſay* and Co. and others.

It has lately appeared that, in many houſes, (and particularly in that of *Liveſay*, *Hargrave*, and Co.) that in order to raiſe money upon bills, and to make thoſe bills more marketable, they cauſed them to be drawn or dated from the country, payable to the order of a fictitious perſon whoſe pretended name they indorſed on the back; and thus giving it the appearance and effect of a bill regularly transferred in the due courſe of buſineſs, it went with a better face to be diſcounted, and was done without heſitation. One of theſe bills having become the ſubject of a moſt intereſting litigation, has led to a deciſion of great importance to the mercantile world.

Illuſtration of the point.

This caſe is ſo very generally known that a particular detail of the circumſtances are unneceſſary, we ſhall therefore give a brief relation of the ſubſtance of it. *Minel* v. *Gibſon*. This caſe was as follows. A bill drawn by *Liveſay*, and Co. on the defendant was made payable to *John White*, or order, and it was found upon a ſpecial verdict, that White was a fictitious perſon, that his name was indorſed upon the bill by *Liveſay*, and Co. that the defendants knew when they accepted the bill that no ſuch perſon as *John White*, whoſe indorſement was then upon the bill, exiſted, and that the indorſement was not made by any perſon of that name: the court of King's Bench thought this caſe decided by *Vere* and *Lewis*, and gave judgment for the plaintiffs; and on a queſtion from the Houſe of Lords, whether the bill might not be deemed in law payable to the bearer, *Hotham*, *Perryen*, and *Thompſon*, barons, and *Gould*, J. gave it as their opinions that it might; but *Eyre*, C. B. and *Heath*, J. differed,—after which Lord *Kenyon*, Lord *Loughborough*, and Lord *Bathurſt* ſpoke in favour of the judgment, and Lord *Thurlow* againſt it, and the judgment was affirmed without a diviſion. 3 *Durnf. & Eaſt*, 481. 1 *H. B.* 569.

Lord

Lord *Kenyon* concluded his obſervations on this caſe to the following effect: This inſtrument may fairly be conſidered as a bill *payable to bearer*. Lord Kenyon's opinion.

Lord Loughborough obſerved that it was found by the ſpecial verdict, that this bill was indorſed by the drawers. He contended that from this moment the bill was no longer payable to the order of White. Therefore his Lordſhip was of opinion that this inſtrument, in its proper and its legal operation, and in the real and true ſtate of the tranſaction between the parties, was a bill *payable to bearer*; that Gibſon and Johnſon, by accepting this bill, undertook to pay it to whoever ſhould produce it to them with the indorſement of *Liveſay*, *Hargrave*, and Co. and who had paid them a valuable conſideration for it. *Blag.* 40. L. Loughborough's opinion.

The Lord Chancellor then put the queſtion; whereupon the verdict of the court of King's Bench was affirmed: by which circumſtance the law is now underſtood to be, that if any perſon accepts a bill, knowing that the bill is payable to a perſon that is not in exiſtence, ſuch acceptor is bound to pay ſuch bill, as a bill *payable to bearer*, which in ſuch a caſe conſiders all indorſees as mere cyphers. *Id.* Such bills are payable to bearer.

To the queſtion propoſed to the Lords on this caſe, whether the matter found by the ſpecial verdict, as far as it relates to the act done by the defendants *Gibſon* and *Johnſon*, imported an *utterance of the bill, knowing it to be forged*, the lords made no deciſion: perhaps from merciful motives, they did not chooſe to decide on the capital part. Whether it be a forgery.

Before the trial of James Bolland, at the Old Bailey, in February ſeſſions 1772, no perſon had been capitally convicted for forging, by way of indorſement, the name of a *ſuppoſed* perſon, or one who never had exiſtence; it having been generally underſtood that it was eſſential to the commiſſion of forgery that it ſhould be done *in the name of another*; and conſequently that the ſigning of a fictitious name could not be conſtrued to amount to that crime. This was the general doctrine prior to Bolland's tranſaction, and many perſons thought the law had been ſtrained to extend to his offence, on account of the extreme infamy of his general character. Bolland's fate, however, has been conſidered as a precedent, and proved fatal to ſubſequent offenders in fictitious forgery. In what caſe it is forgery.

To indorſe a bill with a fictitious name is forgery, though ſuch indorſement was unneceſſary. At the Lent Aſſizes To indorſe a bill with a fictitious name is forgery.

Aſſizes for the county of Leiceſter, 1777, *Edward Tuſt* was tried before Mr. Juſtice *Nares* for forging an indorſement on a bill of exchange: the jury found the priſoner guilty; but the learned and humane judge, cautious of paſſing ſentence of death in a caſe which admitted of doubt, ſubmitted to the conſideration of the twelve judges, whether, upon the following ſtate of facts, the commiſſion was proper?

Though ſuch fictitious indorſement was not neceſſary.

The bill of exchange was the property of one *William Weitheral*, out of whoſe pocket it had been picked or loſt, with other things, at *Leiceſter* races. The priſoner had, the very ſame night, endeavoured to negociate it at Leiceſter; but being diſappointed, he proceeded to *Market Harborough*, where he bought a horſe of one *John Ingram*, the landlord of the inn, and offered him this bill to change. The landlord not having ſufficient caſh in the houſe, carried it to a banker's in the town, where the clerk told him that it was very good paper, for that he knew the payee who had indorſed it, and that if he (the landlord) would put his name on the back of it, it ſhould be immediately diſcounted. The landlord, however, not knowing the perſon from whom he had received it, refuſed to indorſe it; but told the clerk that the gentleman was then at his houſe, and he would go and fetch him: accordingly he went to the priſoner, who accompanied him to the banker's. The clerk then told the priſoner, that it was the rule of their ſhop never to take a diſcount bill, unleſs the perſon offering ſuch bill indorſed it; and therefore if he (the priſoner) would indorſe it, it ſhould be diſcounted. The priſoner immediately indorſed it by the name of "John Williams," which *was not his own name*, and the banker's clerk, deducting the diſcount, gave him caſh for it. The priſoner, in his defence, ſaid he had found it. The judges were unanimouſly of opinion, that this was a forgery; for though the fictitious ſignature was not neceſſary to his obtaining the money, and his intent in writing a falſe name was probably only to conceal the hands through which the bill had paſſed, yet it was a fraud both on the owner of the bill, and on the perſon who diſcounted it. The one loſt the chance of tracing his property, and the other loſt the benefit of a real indorſer. *Leach's Cr. Law.*

Remarks thereon.

A fictitious indorſement to a bill is clearly giving it a falſe credit, and on that principle it is given with an intent to defraud; for perſons who are accuſtomed to receive bills

of

of exchange, &c. conſider every name on them as an additional ſecurity or pledge to indemnify them from loſs: but if the *real* indorſers fail, recourſe cannot be had to a *fictitious* or *imaginary* one. It therefore ſeems now almoſt a ſettled point, that to make uſe of a *fictitious* name, as a *pretended indorſer* of a bill, is *forgery with intent to defraud.*

See the caſe of *Hyam Levy*, who was convicted upon the authority of the above caſe, at the Old Bailey in October ſeſſion, 1782. See alſo the caſe of *Tatlock* v. *Harris.* 3 *Durn. & Eaſt*, 176.

In an indictment for forging a bill of exchange, the bill may be given in evidence, though it is not ſtamped purſuant to the ſtatutes: As in the caſe of *K.* v. *Hawkeſwood.* At Worceſter Lent Aſſizes, 1783, the priſoner was indicted for forging a negotiable bill of exchange, purporting to be drawn by one *Prattington* on Sir *Robert Herries*, and Co. and alſo for forging two indorſements on the ſame; the one on the firm of *Cox* and *Devy*, the other in the name of *John Hadur.* There were alſo the uſual counts for uttering it, knowing it to be forged. The fact of its being a forgery, and that the priſoner had negotiated it with a complete knowledge of the fact, were clearly proved, but the bill was not ſtamped. *Mr. Baldwin*, the priſoner's counſel, ſubmitted to the Court, that the inſtrument in queſtion, even ſuppoſing it to be genuine, was not a *legal bill of exchange*, but a piece of waſte paper, incapable of becoming the ſubject either of fraud or felony; that the party who took it, muſt at that time have known that it was not a legal bill of exchange, or he muſt have been groſsly negligent, for the defect is viſible on the face of it. Mr. Juſtice *Buller*, who tried the priſoner, held, that the ſtamp acts being revenue laws, and not purporting to alter the crime of forgery, could not effect the preſent queſtion, and the jury found the priſoner guilty: but, being a new point, he reſpited the judgment, and reſerved the caſe for the conſideration of the judges. In Eaſter Term, 1783, the judges over-ruled the objection, and determined that the conviction was right. *Leach's Cr. L* 221. Forging a note on unſtamped paper.

A bill or note cannot be made payable to any perſon who is incapable of ſuing for its payment.

If the perſon who has a right to transfer a bill or note die, it devolves upon his perſonal repreſentative; if he becomes a bankrupt, on his aſſignees. 3 *Wilſ.* 1. Partydying.

As

All the parties liable.

As every drawer of a bill is liable to the payment thereof, ſo is every acceptor and indorſer. Alſo if there are ſeveral indorſers of the ſame bill, the laſt indorſee may bring his action againſt the firſt indorſer, or any of them; for the indorſement is, as it were, a new bill, or at leaſt a warranty, as ſome books expreſs it, by the indorſer, that the bill ſhall be paid. 3 *New. Abr.* 607.

The holder may ſue all parties.

The holder of the bill or note, may ſue all the parties who are liable to pay the money; either at the ſame time, or in ſucceſſion; and he may recover judgment againſt all, if ſatisfaction be not made by the payment of the money before judgment obtained againſt all; and proceedings will not be ſtayed in any one action but on payment of debt and coſts in that action, and the coſts in all the others in which he has not obtained judgment. *Golding* v. *Grace.* 2 *H. B.* 749.

But though he may have judgment againſt all, yet he can recover but one ſatisfaction; and if he be paid by one, he may ſue out execution for the coſts in the ſeveral actions againſt the others. 2 *Veſey*, 115.

E. 32 *G. III. Smith* v. *Woodcock*, and the ſame againſt *Dudley*. The firſt of theſe was an action by the holder againſt the drawer of a bill, the ſecond againſt one of the indorſers. There was alſo another action pending by the ſame plaintiff againſt another indorſor, and a fourth againſt the acceptor, who had refuſed payment. A rule *niſi* was obtained on behalf of *Woodcock* and *Dudley*, to ſtay proceedings againſt them, upon payment of the amount of the bill and coſts of theſe two actions. *Lewis* oppoſed the rule, on the ground that the coſts of the other actions ſhould alſo have been paid. But by the court, that is only neceſſary when the application for ſtaying proceedings comes from the acceptor, who is the original defaulter, and againſt whom all the coſts occaſioned by his default may be recovered. 4 *Durnf. & Eaſt*, 691.

Purchaſing a bill of exchange to extort money.

Purchaſing a bill of exchange to extort money is much diſcountenanced by the courts. *Mr. Garrow* applied for the interpoſition of the court of King's Bench, in the caſe of an attorney who had aſſumed a name, and had groſsly miſconducted himſelf; he had purchaſed a bill of exchange, amounting to £10 17*s.* 6*d.* by diſcounting it, and brought a number of actions upon it againſt the acceptor and indorſers for the purpoſe of getting a bill of coſts, which amounted to 46*l.*

After this cauſe had procceded a little way, Lord *Kenyon* deſired that it might be referred to the maſter. There are, ſaid his lordſhip, many things done which ought not to be done, and which we cannot prevent. We do not ſit here in the court of conſcience or of honour, to extend the bounds of the law. We may be ſorry, and feel a great deal of reſentment at practices which we cannot puniſh. I ſpeak this without prejudice to this cauſe. This is not the firſt inſtance of the kind I have ſeen. When ſitting at Guildhall, I recollect caſes of bills of exchange which had been taken by attornies merely for the purpoſe of multiplying cauſes. I felt a great deal of indignation on the occaſion, but was forced to conceal it.

CHAP. VII.

Of Presentment

For Acceptance or Payment.

Whether the holder is bound to preſent for acceptance.

WHETHER the holder of a bill, payable at a certain time after the date, be bound to preſent for acceptance immediately on the receipt of it, or whether he may wait till it become due, and then preſent it for payment, is a queſtion which ſeems never to have had a direct judicial determination: in practice, however, it frequently happens that a bill is negotiated and transferred through many hands without acceptance, and not preſented to the drawee till the time of payment, and no objection ever made on that account. *Mar.* 12, 5 *Burr.* 2671. 1 *Durnf. & Eaſt*, 713. *Kyd's Tr.* 118.

But when a bill is drawn payable within a ſpecified time after ſight, it is neceſſary, in order to aſcertain the period when the bill is to be paid, to preſent it to the drawee for acceptance. 1 *H. B.* 561.

How far incumbent on the holder.

And though in other caſes it may not be incumbent on the holder to preſent it before it is due, yet it is certainly moſt adviſable in all caſes to get it accepted if poſſible, as by that means another debtor is added to the drawer, who becomes a new ſecurity, and conſequently renders the bill the more negotiable. 1 *H. B.* 565. *Burr.* 2670. *Beawes, pl.* 266.

Thereceiver of a bill undertakes to perform certain duties.

The receipt of a bill or note implies an undertaking from the receiver, to every perſon who would be entitled to bring an action on paying it, to preſent in proper time the bill for acceptance, where neceſſary, and each for payment; to allow no extra time for payment; and to give notice without delay to ſuch perſon of a failure in the attempt to procure a proper acceptance or payment; and a default in any of theſe reſpects will diſcharge ſuch perſon from all reſponſibility on account of non-acceptance or non-payment, and make the bill or note operate as a ſatisfaction of any debt or demand for which it was given. *Bailey's Sum.* 57.

With reſpect to the time of preſenting.

With reſpect to the time when bills ſhould be preſented for acceptance, it was lately obſerved by *Buller*, J. in the caſe of *Muilman* v. *D'Eguino*, that the only rule which can be applied to bills of exchange, whether the bills are foreign or inland, and whether they are payable at ſight, at ſo many days after ſight, or in any other manner, is, that due diligence muſt be uſed; and, as the drawer may ſuſtain a loſs by the holder's keeping it any great length of time, it is adviſable in all caſes to preſent it as ſoon as poſſible. It was further ſaid, that the queſtion, what is a reaſonable time? muſt depend upon the particular circumſtances of the caſe; and that it muſt always be left for the jury to determine whether any laches be imputable to the plaintiff. 2 *H. B.* 569. 7 *Durnf. & Eaſt*, 425.

Lord Manſfield's opinion.

It was ſaid, however, by Lord Mansfield, that what is a reaſonable time for giving notice (which obſervation is doubtleſs equally applicable to the time when a bill muſt be preſented for acceptance,) is partly a queſtion of fact, and partly of law: it may depend in ſome meaſure on facts, ſuch as the diſtance at which the parties live, the courſe of the poſt, &c. but that wherever a rule can be laid down with reſpect to this reaſonable time, that ſhould be decided by the court and adhered to for the ſake of certainty. *Tindal* v. *Brown*. 1 *Durnf. & Eaſt*, 167.

Syderbottom v. *Smith*. In an action againſt the indorſer of a note, *Eyre*, C. J. of the common-pleas, directed the jury to find for the defendant, becauſe the plaintiff had not proved diligence to get the money from the maker. *Str.* 649.

Allowing too much indulgence.

And in the caſe of *Gee* v. *Brown*, the holder of an inland bill gave the acceptor time, by intervals, from the 14th of May, when the bill became due, to the 7th of

June, and then ſued the drawer; but there being no notice to him, *Eyre*, C. J. held the loſs ought to fall on the plaintiff. *Str.* 792.

A preſentment either for payment or acceptance muſt be made at ſeaſonable hours; and ſeaſonable hours are the uſual hours of buſineſs in the place where the party lives to whom the preſentment is to be made. But a neglect to make a preſentment at a proper time, may be excuſed by illneſs, or by ſome other cauſe or accident. Muſt be made at ſeaſonable hours.

No delay warranted by the common courſe of buſineſs is improper, nor is any delay which is occaſioned by keeping the bill in circulation at a diſtance from the place where it is payable; but a delay by locking it up for any length of time is improper. *Per Buller*, C. J. 2 *H. B.* 170.

If the drawee of a bill cannot be found at the place where the bill ſtates him to reſide, and it appears that he never lived there, or has abſconded, the bill is to be conſidered as diſhonoured; but if he has only removed, the holder muſt endeavour to find out to what place he has removed; and to make the preſentment there. *Str.* 1087. *Bailey's Sum.* 58. Where drawee cannot be found.

He ſhould in all caſes make every poſſible enquiry after the drawee, and if it be in his power preſent the bill to him; but if the drawee has actually left the kingdom, it will be ſufficient to preſent the bill at his houſe. *Eſp. Ca. Ni. Pri.* 511. Strict enquiry muſt be made.

If on preſentment, it appears that the drawee is dead, the holder ſhould enquire after his perſonal repreſentative, and if he lives within a reaſonable diſtance, ſhould preſent the bill to him. *Molloy*, *b.* 2. *c.* 10. *ſ.* 34. Drawee being dead.

When a bill or check is expreſſed to be payable on demand, or where no time of payment is expreſſed, it is payable inſtantly on preſentment, which may be made immediately after it is delivered to the payee, without allowing any days of grace; and the preſentment for payment of ſuch a bill or check muſt be made within a reaſonable time after the receipt of it. *Chitty's Tr.* 146. Bill or check on demand.

Upon a bill, check, or note of this kind given by way of payment, the courſe of buſineſs ſeemed formerly to allow the party to keep it, if it was payable in the place where it was given, until the morning of the next day of buſineſs after its receipt, and to the next poſt if payable elſewhere, but not longer. Thus where a note of this kind payable in London was given there in the morning, a preſentment What a reaſonable time.

ſentment the next morning was held ſufficiently early: a preſentment at two in the afternoon too late, as will appear by the following caſes.

In the caſe of *the Eaſt India Company* v. *Chitty*, *Str.* 1175, it appeared that at half an hour after eleven in the morning of the 18th of January, the defendant being indebted to the plaintiffs, paid to the caſhier a note of *Caſwell* and *Mount*, Goldſmiths in Lombard-ſtreet: they continued to pay all notes till the next day at two; and immediately after they had ſtopped payment, the company's ſervant came with the note. The queſtion was, who ſhould bear the loſs? and upon examining the merchants it was held, that the company had made it their own by not ſending it out the afternoon they received it, or at furtheſt the next morning; and the jury found accordingly for the defendant.

But in the caſe of *Appleton* v. *Sweetapple*, *M.* 23 *G. III.* a bill payable in London on demand, was given to the plaintiff in London at one o'clock in the afternoon, and he did not preſent it till the next morning. The queſtion was, whether he preſented it in time? Lord Mansfield left the point to the jury, who found for the defendant; but the court granted a new trial, becauſe the queſtion was a matter of law upon which the judge ſhould have decided: the jury found again for the defendant; but againſt the judge's direction; a ſecond new trial was granted, and the jury again found for the defendant; and then the court refuſed to interfere.

Merchants' opinion reſpecting the proper time of preſenting checks, &c.

If it is a queſtion of fact, it ſhould ſeem that, according to the late opinions of juries of merchants, a check on a banker ought, if given in the place where it is payable, to be preſented for payment the ſame day it is received, if the diſtance, or other common circumſtances will allow of it: if, on the contrary, the queſtion is to be conſidered as dependant on the uſe of merchants, as already ſettled by judicial deciſions; the reſult of thoſe deciſions is, that a preſentment of a draft, or banker's note, payable in the place where it was given, may be made at any time before twelve o'clock on the day after the receipt of it, or at any time within twenty-four hours after ſuch receipt. *Eſp. Ni. Pri. Bailey's Sum.* 65. *Kyd's Tr.* 45. 1 *H. B.* 1.

Checks, &c. ſhould be taken for payment as ſoon as poſſible.

On the whole, the beſt rule in theſe caſes ſeems to be, that drafts on bankers, payable on demand, ought to be carried for payment on the very day on which they are received,

ceived, if from the diſtance and ſituation of the parties that may conveniently be done: and when it is conſidered that great part of the payments for the purchaſe of ſtock in the public funds, is made by the purchaſers in drafts on their bankers at the inſtant of making the transfer, it is certainly adviſable to take the drafts for payment without delay. *Beawes*, 482. *Kyd's Tr.* 46.

Eſpecially if given at a diſtance.

Where a check or bill payable on demand is given to a perſon at ſuch a diſtance from the place where it is payable, that a preciſe rule cannot be laid down relative to the time when it muſt be preſented, eſpecially if peculiar circumſtances attend it; the rule is generally, that it muſt be preſented as ſoon as poſſible; and the time for preſentment ſeems to be governed by the ſame rules as regulate that within which notice of non-acceptance muſt be given. 2 *H. B.* 565. *Chitty's Tr.*

At what hours.

In all caſes, bills for payment ſhould be preſented at a reaſonable time before the expiration of the day on which they became due; and if by the known cuſtom of any particular place, bills are only payable within limited hours, they ſhould be preſented within thoſe hours. *Bailey's Sum.* 59.

This rule is alſo ſaid to extend to a preſentment out of the hours of buſineſs, to a perſon of particular deſcription, where, by the known cuſtom of the place, all ſuch perſons begin and leave off buſineſs at ſtated hours. *Chitty's Tr.* 148.

Payment not demandable on the ſecond day of grace.

In the caſe of *Wiffen* v. *Roberts*, a bill was dated 1ſt of November 1793, and payable three months after date; in an action againſt the drawer it appeared that the *only* preſentment for payment was on the 3d of February, which was only the *ſecond* day of grace, and the day following was not a day of public reſt; and Lord Kenyon held that the non-payment by the acceptor the day before the bill became regularly due, was not ſuch a default in him as could authoriſe the holder to have recourſe to the drawer, and the plaintiff was nonſuited. *Eſpinaſſe* 261.

On the 3d day of grace.

Upon the third or laſt day of grace, and within a reaſonable time before the expiration of that day, a bill or note muſt be preſented for payment.

A ſecond preſentment.

If the holder makes a ſecond preſentment on that day, the drawer or maker is entitled to inſiſt on paying it when ſuch preſentment is made, without paying the fees of noting or proteſting; notwithſtanding ſuch preſentment is made after the banking hours, and for the purpoſe of noting

noting and proteſting. In the caſe of *Leſtley* v. *Mills*; an inland bill for 20*l.* 7*s.* payable 14 days after ſight, became due the 24th of April 1790. A banker's clerk called with it for payment in the morning, and the acceptor not being at home, left word where it lay; after ſix, another of the clerks, who was a notary, noted it, and between ſeven and eight the firſt clerk went with it again: the acceptor tendered him the amount of the bill, and ſixpence over, but he inſiſted on 2*s* 6*d.* for the noting, and *that* ſum not being paid, an action was brought againſt the acceptor, who pleaded the tender. Lord Kenyon thought a tender of the amount of the bill, at any time of the day it was payable, was ſufficient; upon which the jury found a verdict for the defendant. A rule to ſhew cauſe why there ſhould not be a new trial was afterwards granted; and, upon cauſe ſhewn, Lord Kenyon thought the acceptor had till the laſt minute of the day of grace to pay the bill, and that it could not be noted or proteſted till the following day. His lordſhip further obſerved, that, "if the acceptor was ready to pay the money during the day that it became payable, no perſon could ſay he would not pay. This bill becomes due the 24th of April, and when the clerk calls in the morning the acceptor is from home. He calls in the evening, and the money is tendered to him, but he is told he muſt pay 2*s.* 6*d.* more; when the tender covered the whole ſum, in his lordſhip's opinion. This was a caſe of which the bankers ought very ſeriouſly to conſider; they ſhut up at ſix, but other people did not ſhut up their ſhops at ſix."

Bill not to be proteſted till the day after it becomes due.

Buller, J. thought they were payable any time of the laſt day of grace upon demand, ſo as ſuch demand was made within reaſonable hours; and that they might be proteſted on that day. Groſe, J. declined giving any opinion upon theſe points; but the whole court concurred, that the bill in queſtion could not be noted, becauſe it was payable within a limited time after ſight, and the ſtatute authoriſes the noting of ſuch inland bills only as are payable after date. The rule was diſcharged. 4 *Durnf.* & *Eaſt*, 170.

Though a contrary cuſtom ſtill prevails.

But though this deciſion may have eſtabliſhed the law, that a bill of exchange is not to *be proteſted until the day after it becomes due*, yet it has not varied or leſſened the contrary practice. Bankers contend, that the cuſtom of merchants having always been to proteſt the bill in the evening

evening of the day it becomes due, no power leſs than an act of the legiſlature can ſet it aſide; and ſince this cuſtom produces a conſiderable emolument, by making one of their clerks act as a notary, the practice will not eaſily be given up. On the other hand, though this deciſion has been confirmed, and the law diveſted of all doubt, yet the conſideration of 2s. 6d. being of ſmall import, and the delay of payment to the laſt moment rather a ſubject of diſgrace than otherwiſe, very few will be willing to conteſt the matter. *Blag.* 29.

By whom to be preſented.

Preſentment for payment, where neceſſary, muſt be made by the holder of the inſtrument, or his agent, being competent to give a legal acquittal on receipt of the money, to the perſon in general on whom it is drawn; and a perſon in poſſeſſion of a bill payable to his own order, is a holder for the purpoſe, though it was once thought he had only an authority to indorſe. It is not neceſſary that the demand ſhould be perſonal, it being ſufficient if it is made at the houſe of the acceptor; and it is the ſame thing, in effect, if it be made at the place appointed by him for payment, or of his agent who has been uſed to pay money for him. *Eſp.* 115, 512. 10 *Mod.* 286. *Poth. pl.* 129. 2 *H. B.* 509.

Compenſation.

Though the general rule of law is, that when computation is made *from* an act done, the day in which the act is done muſt be included; the law with reſpect to bills of exchange is different, for the cuſtom of merchants, as judicially ſanctioned, has ſettled that where a bill is payable at uſance, ſo many days after ſight, or date, the day of acceptance, or of the date muſt be excluded. 3 *Durnf. & Eaſt*, 623. *Lord Raym.* 280. *Beawes, pl.* 252.

If a bill drawn payable ten days after ſight, is preſented on the 1ſt of a month, the ten days expire on the 11th, and the bill, by the addition of the days of grace, becomes due on the 14th. When a bill or check is drawn payable at uſance, or a certain time after date, and it is not dated, the time when it is payable muſt be computed from the day it iſſued, excluſive thereof. *Armitt* v. *Breame, Raym.* 1076. *Bailey's Sum.* 68.

Bankruptcy of the drawee not an excuſe for neglecting preſentment.

The bankruptcy or known inſolvency of the drawee, or maker, is no excuſe for a neglect to make a preſentment, or to give notice. In *Ruſſel* v. *Langſtaffe*, Lee ſaid it had frequently been ruled by Lord Mansfield at Guildhall, that it is not an excuſe for not making a demand on a note or bill, or for not giving notice of non-payment, that the drawer

drawer or acceptor was become a bankrupt, as many means may remain of obtaining payment by the aſſiſtance of friends, or otherwiſe; and Lord Mansfield, who was in court, did not deny the aſſertion. 1 *Durnford & Eaſt*, 408.

Drawee diſhonouring bill.

If the drawee, on preſentment for acceptance, diſhonours the bill, the holder may inſiſt on immediate payment by the parties liable to him, or, in default thereof, may inſtantly commence an action againſt them; on which principle it was determined, that if a man draws a bill, and commits an act of bankruptcy, and afterwards the bill is returned for non-acceptance, the debt is contracted before the act of bankruptcy, and may be proved under the commiſſion; which could not have been the caſe, if the time when notice of non-acceptance was given had been conſidered as the period when the debt was contracted. *Doug.* 54. *Buller's Ni. Pri.* 269. 2 *Str.* 949.

CHAP. VIII.

Of Promissory Notes, Bank Notes, Banker's Notes and Checks.

Promiſſory note, what.

A *PROMISSORY Note* may be defined to be a written promiſe for the abſolute payment of money, drawn by the maker upon himſelf in the nature of a bill of exchange, at a time therein limited, or on demand, to a perſon therein named; or ſometimes to his own order, or often to the bearer. At firſt theſe notes were conſidered only as written evidence of a debt; for it was held that a promiſſory note was not aſſignable or indorſible over, within the cuſtom of merchants, to any other perſon, by him to whom it was made payable; and that if, in fact, ſuch a note had been indorſed or aſſigned over, the perſon to whom it was indorſed or aſſigned, could not maintain an action, within the cuſtom, againſt the perſon who drew and ſubſcribed the note; and that within the ſame cuſtom, even the perſon to whom it was made payable could not maintain ſuch action. *Kyd's Tr.* 18.

Promiſſory notes made negotiable like bills by 4 *Ann.*

But the increaſe of trade, and the neceſſity of paper credit, induced bankers and others to contrive ſome expedient of bringing promiſſory notes within the cuſtom of

of merchants, and making them negotiable like inland bills of exchange: this queſtion, however, agitated and exerciſed the judgment of the moſt able lawyers of the laſt century. But at length, in conſequence of an application from the merchants, it was enacted by the 3 & 4 *Anne*, *c.* 9 and made perpetual by the 7th of *Anne*, *c.* 25. *ſ.* 3. "that, from the firſt of May 1705, all "notes in writing made and ſigned by any perſon or perſons, body politic or corporate, or by the ſervant or "agent of any corporation, banker, goldſmith, merchant "or trader, who is uſually entruſted by him, her, or "them, to ſign ſuch promiſſory notes for him, her, or "them, whereby ſuch perſon or perſons, body politic "and corporate, his, her, or their ſervant or agent as "aforeſaid, doth or ſhall promiſe to pay to any other perſon or perſons, body politic and corporate, his, her, or "their order, or unto bearer, any ſum of money mentioned in ſuch note, ſhall be taken and conſtrued to be, "by virtue thereof, due and payable to any ſuch perſon "or perſons, body politic and corporate, to whom the "ſame is made payable; and alſo every ſuch note payable "to any perſon or perſons, body politic and corporate, "his, her, or their order, ſhall be aſſignable or indorſable over, *in the ſame manner as inland bills* are or may "be, according to the cuſtom of merchants; and that "the perſon or perſons, body politic and corporate, to "whom ſuch ſum of money is or ſhall be by ſuch note made "payable, ſhall and may maintain an action for the ſame, "*in ſuch manner as he*, ſhe, or they, *might do upon any* "*inland bill of exchange*, made or drawn according to "the cuſtom of merchants, againſt the perſon or perſons, "body politic and corporate, who, or whoſe ſervant or "agent as aforeſaid, ſigned the ſame; and that any perſon or perſons, body politic and corporate, to whom "ſuch note that is payable to any perſon or perſons, body "politic and corporate, his, her, or their order, is indorſed or aſſigned, or the money therein mentioned ordered to be paid by indorſement thereon, ſhall and may "maintain his, her, or their action for ſuch ſum of "money, either againſt the perſon or perſons, body politic and corporate, who, or whoſe ſervant or agent as "aforeſaid, ſigned ſuch note, or againſt any of the perſons that indorſed the ſame, *in like manner as in caſes* "*of* inland bills of exchange."

Notes are on the ſame footing.

By this ſtatute promiſſory notes are placed upon the ſame footing as bills of exchange, and conſequently the deciſions reſpecting the one are in general applicable to the other. Thus it has been adjudged that there is no difference between bills and promiſſory notes; and the latter, when payable at a ſtated time, are alſo entitled to days of grace. 4 *Durnf. & Eaſt*, 152.

In the caſe of *Carlos* v. *Fancourt*, the queſtion was, whether a note payable out of a particular fund could be declared on as a promiſſory note, and it was decided in the negative; becauſe promiſſory notes muſt ſtand or fall on the ſame rules by which bills of exchange are governed. 5 *Durnf & Eaſt*, 482.

But the note muſt be indorſed firſt.

In *Heylin* v. *Adamſon*, the queſtion was, whether the indorſee of a bill was bound to make a demand upon the drawer as the indorſee of a note muſt upon the maker; and, by Lord Mansfield, while a note continues in its original ſhape of a promiſe from one man to another, it bears no ſimilitude to a bill of exchange: but when it is indorſed the reſemblance begins; for then it is an order by the indorſer upon the maker to pay the indorſee, which is the very definition of a bill: the indorſer becomes, as it were, the drawer; the maker of the note the acceptor, and the indorſee the perſon to whom it is made payable. This point of reſemblance once fixed, the law relative to bills becomes applicable to promiſſory notes. All the authorities, and particularly Lord Hardwicke in *Hamerton* v. *Mackarell*, *M.* 10 *G. II.* put promiſſory notes on the ſame footing with bills of exchange. *Burr.* 669, 1224.

Reſpecting corporations

Whether a corporation, which has not a ſpecial power expreſsly given for the purpoſe, can be concerned in drawing or accepting a bill of exchange, or promiſſory note, or in the negotiation of either, or can be made the payee, is a queſtion which ſeems never to have had the conſideration of a court; perhaps becauſe nobody has ever entertained a doubt on this head; and it ſeems to have been taken for granted by the legiſlature, and it is conſiſtent with the general principles of law, that by the intervention of an agent or ſervant, lawfully authorized, or corporation, on which no reſtraint is impoſed in its original conſtitution, might in this reſpect act as a natural perſon. There is however a proviſo in the act of 3 & 4 *Anne c.* 9, which puts promiſſory notes on the ſame footing with bills of exchange, that no body politic or corporate ſhall have power, by virtue of it, to iſſue or give out notes, by themſelves or their ſervants, other than ſuch as they might have

have iſſued if this act had not been made. *Edie* v. Eaſt India Company. *Blackſt.* 395. *Burr.* 1216.

By 5 *W. & M. c.* 20. *ſ.* 28, THE BANK OF ENGLAND has a ſpecial power, conferred on it for this purpoſe.

Origin of bank notes.

BANK NOTES owe their introduction and eſtabliſhment to the following ſtatutes, *viz.* the 5th of *William and Mary*, *c.* 20. *ſ.* 19, and 20; and the 8th and 9th of *William III*, *c.* 20, *ſ.* 30. The firſt empowered the king to incorporate the perſons ſubſcribing towards the raiſing and paying into the receipt of the exchequer the ſum of 1,200,000*l* by the name of "the Governor and Company of the Bank of England." Theſe notes are uniformly made payable on demand, and are not, as Lord Mansfield obſerved, in *Miller* v. *Race*, mere ſecurities, or documents for debts, nor are they eſteemed as ſuch; but are conſidered as money or caſh in the ordinary courſe and tranſactions of buſineſs, by the common conſent of mankind, which gives them the credit and currency of money to every effectual purpoſe: and on payment of them, whenever a receipt is required, the receipts are always given as for money. They paſs, by will, which bequeaths all the teſtator's money or caſh.

They are conſidered as caſh.

And a proper tender in payment.

And it was decided in Hilary term 1790, that bank notes are conſidered as money, and therefore a proper tender in payment, in the caſe of *Wright* v. *Read*. *Mingay* obtained a rule to ſhew cauſe why the annuity deeds in this caſe ſhould not be delivered up to be cancelled, on the ground that the true conſideration was not ſet forth in the memorial: part of the conſideration was in money, and the reſt in *bank notes* of the Bank of England; whereas the whole conſideration was deſcribed as money in the memorial. *Erſkine* now ſhewed cauſe, and ſaid that bank notes had always been conſidered as money; they are ſo in the caſe of tenders. Lord *Kenyon*, C. J. bank notes are conſidered as money to many purpoſes: it was ſo held by Lord *Mansfield* and the court, in *Miller* v. *Race*. *Aſhurſt*, J. the annuity act was paſſed for the purpoſe of guarding againſt fictitious conſiderations; but it cannot be contended that the payment in this caſe is within the miſchief which that ſtatute intended to remedy. Bank Notes are money to all intents, and in this inſtance were taken as ſuch. *Buller*, J. This court has never yet determined that a tender of bank notes is at all events a good tender: but if they have been offered, and *no objection has been made on that account*, this court has conſidered

ſidered it to be a *good tender*; and very properly ſo, for bank notes paſs in the world as caſh. In a caſe on the other ſide of the hall, the Lord Chancellor once ſuggeſted a doubt whether theſe kind of notes were money; but here we have always been inclined to conſider them as ſuch, though the queſtion has never yet beeen diſtinctly determined. 3 *Durnf. & Eaſt*, 554.

Bank notes are not a legal tender, if objected to at the time of the offer; though, after ſuch a tender, a creditor cannot arreſt his debtor, it having been enacted, by the 38 *G. III. c.* 1. *ſ.* 8. that no perſon ſhall be held to bail, unleſs the affidavit of the debt alledged that no offer has been made to pay the debt in bank notes payable on demand.

In bankruptcies. On bankruptcies, bank notes, cannot be followed as identical and diſtinguiſhable from money. If they are loſt, indeed, an action of trover will lie againſt the finder, by the true owner; as it will alſo for money before it has paſſed in currency.

But after they have come into the hands of a third perſon, in a fair courſe of dealing, they can no more be recovered of him than money under the ſame circumſtances.

It has been adjudged, that an action for money had and received will not lie againſt a finder of bank notes, to recover the value, unleſs money has been actually received for them. *Noyes* v. *Price* and another. *H.* 16 *G. III.*

Formal ſet of words not neceſſary. A formal ſet of words is not eſſential to the validity of a promiſſory note, caſh note, or Bank of England note, any more than it is to a bill of exchange. It is ſufficient if it amounts to a promiſe to pay money. And therefore it hath been held, that a note drawn in theſe words *I promiſe to account with I. S. or his order for* 50*l. value received by me, &c.* is a good negotiable note, within the ſtatute 3 & 4 *Anne c.* 9. and that the word *account* ſhall be conſtrued the ſame as to *pay*, and not to render an account as a factor or bailiff; and the rather, becauſe he is not only accountable to *I. S.* but alſo to his order; which he cannot be as a factor or bailiff, and therefore it muſt be to pay the money to the indorſee, or order of *I. S. Morris* v. *Lea. Str.* 629.

But they muſt convey a promiſe. But the mere acknowledgment of a debt, without ſome words from whence a promiſe to pay money can be reaſonably inferred, can only be conſidered as evidence of a debt.

debt. Hence the common memorandum of *I O U*, has been declared not to amount to a promiſſory note. *Eſp. Ca. Ni. Pri.* 426.

It has been adjudged that a note written by the plaintiff, and ſubſcribed by the defendant, is a note *made and ſigned* by the defendant within the act of 3 & 4 *Anne c.* 9. for the ſigning or ſubſcribing is the lien, and the writing or making it only the mechanical part of it. *T.* 6 *Anne. Aſh v. Baron.* Note only ſigned by the party.

By the 23 *G. III. c.* 49. *ſ.* 9, and other ſubſequent ſtatutes, all promiſſory and other notes and bills, iſſued by the BANK OF ENGLAND, are exempted from any ſtamp-duty, in conſideration of the Governors and Company paying into the receipt of his Majeſty's Exchequer the annual ſum of 12,000*l.* by half-yearly payments. It is alſo provided, that nothing in theſe acts ſhall be conſtrued to give legality to any bill of exchange or promiſſory note which was not legal before. Bank notes exempted from ſtamp duty.

An order or promiſe to pay within a limited time after the payment of money due from Government, is a good note, becauſe it is morally certain that ſuch payment will be made. *Andrew's* v. *Franklin.* A note payable two months after a certain ſhip ſhould be paid off, was objected to, as depending upon a contingency which might never happen; but, by the court, the paying off the ſhip is a thing of a public nature, and this is negotiable as a promiſſory note: judgment for the plaintiff. *Str.* 24. A promiſe almoſt on a contingency.

A promiſſory note requires no proteſting, though it may be indorſed over by a variety of people; for as there is no drawee, there can be no proteſt either for non-acceptance, or for non-payment. The law conſiders a promiſſory note in the light of a bill drawn by a man upon himſelf, and accepted at the time of drawing; and therefore, in caſes of non-payment, the indorſor, or perſon holding the note, has his remedy againſt the drawer at any diſtance of time within ſix years; even though he ſhould forget to give advice of its having been refuſed payment.—This is an advantage which always ariſes to the holder of a promiſſory note, which does not extend to the holder of a draft. A promiſſory note requires no proteſt.

Bankers' Caſh Notes, formerly called Goldſmiths' notes, are promiſſory notes given by bankers, who were originally Goldſmiths. Theſe notes were attempted to be introduced by the Goldſmiths, about thirty years before the commencement of the reign of *Anne.* They were Banker's caſh notes.

were countenanced by the merchants, and generally eſteemed as negotiable; but Lord Holt ſtrenuouſly oppoſed the negotiability of theſe, as well as of common promiſſory notes; and they were not generally ſettled to be negotiable till the ſtat. of 3 and 4 *Anne c.* 9, was paſſed, which relates to notes of the two deſcriptions above denominated. Theſe bankers notes ſeem originally to have been given by bankers to their cuſtomers, by way of acknowledgment for having received money for their uſe. *Holt*, 119. 1 *Salk.* 283.

Their form and uſe.

Theſe caſh-notes are now ſeldom made or iſſued, except by country bankers; the introduction of checks having ſuperſeded their uſe. When notes are iſſued by London bankers, they are called ſhop-notes: their form is ſimilar to that of a common promiſſory note, payable to bearer on demand, and are ſtated in pleadings as ſuch. Being payable on demand, they are conſidered as caſh, whether payable to order or bearer. Like bankers' checks, they are generally transferred from one perſon to another by delivery. Or they may be negotiated by indorſement, when the acts of indorſing will operate as the making of a bill of exchange, and the inſtrument may then be declared on as ſuch, againſt the indorſor. In other reſpects they are governed by the ſame rules as bills of exchange. *Lord Raym.* 744. *Doug.* 635. 1 *Salk.* 132. 4 *Durnf. & Eaſt*, 149.

Notes payable to the bearer on demand.

But though the law relative to the transfer of bills of exchange is generally applicable to the transfer of promiſſory notes, it differs from a bill in one inſtance, namely, in the *time* when a transfer of it may be made: for a bill being once paid, cannot again be negotiated ſo as to raiſe any new contracts on it; but by 31 *G. III. c.* 25, notes payable to the *bearer on demand*, for any ſum not exceeding 200*l.* and ſtamped with a proper ſtamp, may be *re-iſſued after payment* without a new ſtamp, if the perſon who made and firſt iſſued them, paid them at the place where they were firſt iſſued or negotiated. And by the ſame ſtatute it is enacted, that notes of the ſame deſcription, *not exceeding thirty pounds*, may be *re-iſſued after payment*, by whomſoever, or whereſoever they may have been paid. *Chitty's Tr.* 176.

What drafts on demand, &c. pay no duty.

By the 31 *G. III. c.* 25, No draft or order for the payment of money to the *bearer on demand*, bearing date on or before the day on which it is iſſued, and at the place from which it is drawn and iſſued, and drawn on a *banker*

acting as ſuch within *ten* miles of the place where ſuch draft or order was actually made, is ſubject to any duty.

On payment of the amount of a bill or note, doubts have been entertained whether the perſon paying can inſiſt upon a receipt being given; but it is uſual to give a receipt on the back of the bill, which need not, like other receipts, be ſtamped, the legiſlature having perhaps ſuppoſed that the ſtamp upon the bill or note before it was iſſued, was ſufficient. See 23 *G. III. c.* 9.

If a banker pay the draft of a trader keeping caſh with him, after knowledge of an act of bankruptcy, the aſſignees may recover the money. 2 *Durnf. & Eaſt*, 113.

CHAP. IX.

Of Partners and Partnership respecting Bills, &c.

PARTNERS are where two or more perſons agree to come in ſhare and ſhare alike to any trade or bargain, in certain proportions agreed upon. 16 *Vin. Abr.* Tit. *Partners.* Partners, what.

Where there are two joint traders, and a bill is drawn on both of them, the acceptance of one binds the other, if it concern the joint trade, becauſe they trade for a common benefit; and therefore where one of them gives credit, it is the act of both. And this cuſtom being extremely convenient to perſons in trade, our courts have long given their ſanction to it. 1 *Salk.* 125. *Gilb. L. E.* 117, 118. 12 *Mod.* 345. 7 *Durnf. & Eaſt*, 207. Acceptance of one binding to both.

It has been ſaid, however, that the act of one partner will not bind the other, if it concerns him only in a diſtinct intereſt; but it appears from other authorities that it is not material whether the bill is drawn or accepted on account of the partnerſhip concern or not, provided the holder is not conuſant of its being the act of one partner for his ſole benefit; and that one partner, in the name of the firm, or of all the parties, may pledge the credit of his co-partner, or co-partners, to any amount by any act in the way of merchandize. *Peake*, 80. 2 *Vern.* 277, 292. *Eſp.* 524. How far it binds one in a diſtinct intereſt.

But

By deed. But one partner cannot bind another by deed, without an expreſs authority for ſo doing. 4 *Durnf. & Eaſt*, 313. 7 *Durnf. & Eaſt*, 207.

Where a note or bill is drawn in favour of two or more in partnerſhip, an indorſement by one will bind both or all, if the inſtrument concern their joint trade. *Kyd's Tr.* 106.

Bill drawn by two who are not partners. So, where a bill drawn by two is made payable to them or their order, it would ſeem from principle that either might transfer without the other; for when two perſons join in the ſame bill, they hold themſelves out to the world as partners, and, for that purpoſe, are to be treated as ſuch; and when a bill goes out into the world, the perſons to whom it is negotiated are to collect the ſtate and relation of the parties from the bill itſelf. If they appear on the bill as partners, it may be of leſs public detriment to ſubject them to the inconvenience of being treated as ſuch, than to permit them to deny that they are ſo. *Carwick* v. *Vickery*. *Doug.* 630, 653. *Kyd's Tr.* 106.

Muſt be indorſed by both. But in the above caſe, the defendant had a verdict, becauſe the inſtrument was not ſigned by both the payees, according to the univerſal uſage and underſtanding of the merchants and bankers in London.

If a factor of an incorporated company draws a bill on ſuch company, and any one member accepts it, the acceptance will not bind the company, nor any other member of it, becauſe it is a private act of the party, and not a public act of the company.

On the ſame principle, if ten or more merchants, each in his individual capacity, employ one factor, and he draws a bill on all of them, and one accepts it, this ſhall only bind him, and not the reſt, becauſe they are ſeparate in intereſt, the one from the other. *Buller's Ni. Pri.* 279. *Beawes*, *pl.* 228.

On the diſſolution of partnerſhip. If on a diſſolution of partnerſhip between three or more partners, an authority be given to one of them to receive all debts owing to, and to pay thoſe due from, a partnerſhip on ſuch diſſolution, this does not authorize him to indorſe a bill of exchange in the name of the partnerſhip, though drawn by him in that name, and accepted by a debtor of the partnerſhip after the diſſolution. 1 *H. B.* 155.

Acceptance by one partner only. When an acceptance is made by one partner only, on the partnerſhip account, it ſhould expreſs that he accepts for ſelf and partner, and when by an agent for his principal,

cipal, it is uſual and neceſſary for him to ſpecify that he does it as agent, as otherwiſe it would make him perſonally reſponſible. *Poth. pl.* 118. *Str.* 955. 1 *Durnf. & Eaſt*, 172.

Partners pleading the ſtatute of limitations.

On an action on the ſtatute of limitations, reſpecting partners, *H.* 32 *G. III. Perry* and others againſt *Jackſon*, Bart. and others. This was an action on a bill of exchange for 100*l.* by the payees againſt the drawers. The declaration ſtated, that the defendants on the 24th of November 1767, at New York, in parts beyond the ſeas, *to wit*, at *London*, &c. drew the bill in queſtion, requeſting *R. Willis* to pay at 40 days ſight the contents to the plaintiffs: that *Willis*, in January 1768, refuſed to accept, and afterwards to pay it: by reaſon whereof, and according to the uſage and cuſtom of merchants, the defendants became liable to pay, &c. The defendants pleaded ſeverally the ſtatute of limitations: to which the plaintiffs replied, that when the cauſe of action accrued to the plaintiffs, one of them was abroad in parts beyond the ſeas, and out of the kingdom of Great Britain, *to wit*, at New York in America; and that he remained ſo abroad, in parts beyond the ſeas, continually from thence until October 1787, when he returned, &c. averring that they exhibited their bill within ſix years after his return. The defendants demurred generally to theſe replications.

Baldwin and *Adam* argued in ſupport of the demurrers, and Wood *contra*. Lord *Kenyon*, C. J. It is rather ſingular that this is the firſt time that this queſtion has been brought into a court of law, though the circumſtance on which the queſtion ariſes muſt have frequently occurred. It being admitted that there is no decided caſe on this point, it muſt depend on the reaſonable conſtruction to be put upon this act of parliament. The proviſo on which the queſtion ariſes was introduced into this ſtatute in order to protect the intereſts of thoſe perſons which there was no one of competent age, of competent underſtanding, or competent in point of reſidence in this country, to protect. Now two of the plaintiffs in this caſe have always been reſident here: and it was their duty to watch over thoſe intereſts in which they themſelves were equally concerned with the partner who reſided abroad. It is admitted that *one partner* may do ſeveral acts to bind the intereſts of all; *he* may releaſe as well as create a debt; *he* may alſo, by his acknowledgement of a debt, take a caſe out of the ſtatute of limitations; and I ſee no reaſon why the

ſame rule ſhould not hold good in the preſent inſtance. The third ſection of this act of parliament limits the time of bringing actions in all caſes to ſix years after the cauſe of action accrues; the plaintiffs therefore were bound to commence their action at an earlier period, unleſs they come within the exception of the laſt clauſe of the act, by which it is enacted, "that if any *perſon* or *perſons* entitled to ſuch action, &c. be beyond the ſeas, then ſuch perſon or perſons ſhall be at liberty to bring the ſame actions, ſo as they take the ſame within ſuch time as before limited after their return from beyond the ſeas as other perſons having no ſuch impediment might have done." Now the words of this clauſe, grammatically ſpeaking, do not apply to the preſent caſe: they only extend to caſes where the perſon individually, a ſingle plaintiff, or *perſons* in the plural, when there are ſeveral plaintiffs, are not in a ſituation to protect their intereſts. Neither does this caſe come within the policy of the law which provides that, if parties neglect their intereſts for ſuch a length of time as ſix years, they ſhall loſe the benefit of ſuing to inforce their demands. I am therefore clearly of opinion, both on the words of the act of parliament, and on grounds of policy, that the plaintiffs are barred by the ſtatute of James. *Aſhurſt*, J. The plaintiffs are not now entitled to recover on this bill of exchange, whether their caſe be conſidered on the words of the ſtatute, or on the reaſon of the thing. The plaintiffs do not come within the words of the proviſo, as my lord has already obſerved: and this ſtatute having been always conſidered as a beneficial law for the public, we ought not to extend the exceptions in it to a caſe which does not require it. It was competent in the plaintiffs, *who reſided in England*, to bring the action as well as to releaſe it. And in conſtructing another act of parliament, *viz.* the 14 *G. II. c.* 17. *ſ.* 3. which requires ten days notice of trial where the defendant reſides above 40 miles from London, we have determined, that if *one* of the defendants reſide within that diſtance, ſo long a notice is not neceſſary. *Buller*, J. declared himſelf of the ſame opinion. *Groſe*, J. abſent. 4 *Durnf. & Eaſt*, 516.

Joint debts. Lord Chancellor King was of opinion that *joint* debts could not be ſet againſt a *ſeparate* demand due to the bankrupt; this caſe not being within the ſtatute of 2 *G. II. c.* 22. *ſ.* 13.

But

But generally ſpeaking, as Lord Chancellor *Cowper* ſaid, where there was mutual credit between a bankrupt and a creditor, the balance ſhould only be paid; and the clauſe of the ſtatute was not to be conſtrued of dealings in trade only, or in caſe of mutual running accounts, but alſo where one credit was upon mortgage, and the other upon note; obſerving that, in all caſes of mutual credit it was natural juſtice and equity that only the balance ſhould be paid. *Wilſ.* 326.

Separate creditors.

Separate creditors are allowed to come in under a *joint* commiſſion; but the joint effects are firſt to be applied to pay the partnerſhip debts: and as to the ſeparate effects, firſt the ſeparate creditors, and afterwards the partnerſhip creditors, are to be paid out of the ſame. *Atk.* 67. *pl.* 22. 2 *Vern.* 706. *pl.* 628.

A gives a promiſſory note for 200*l.* payable to *B*, or order; *B.* indorſes it to *C.* who indorſes it to *D.*—*A. B.* and *C.* became bankrupts, and *D.* received 5*s.* in the pound, on a dividend made by the aſſignees of *A.*—— Lord Chancellor King ordered *D.* to come in as a creditor for 150*l.* only out of *B's.* effects. 2 *Wilſ.* 407. *pl.* 129.

And Lord Chancellor Hardwicke was clearly of the ſame opinion, upon a ſimilar occaſion. *Atk.* 137.

Bill drawn by an agent.

If a bill is drawn and ſigned by an agent, it is uſual to ſign it as follows: *A. B.* for *C. D.* and if he does not mention for whom he ſigns, he will be perſonally liable; and if ſigned by one perſon for himſelf and partners, it is uſual, and perhaps neceſſary, to ſign it as follows: "*A. B.* for *A. B.* and Company," or to that effect.

Notice of diſſolving partnerſhip in the Gazette.

As partners are, in a great degree, accountable for the acts of each other, it ſeems abſolutely neceſſary that after the diſſolution of their partnerſhip, they ſhould give *notice* of ſuch diſſolution in the Gazette: by this prudent ſtep the conſequences are avoided of any one of the partners making, indorſing, or accepting a bill in their names. And even ſuch notice is not ſufficient, unleſs it be brought home to the knowledge of the holder of the bill: it will therefore be neceſſary to apprize their individual correſpondents of ſuch an occurrence. *Peak*, 42, 154. *Cowp.* 449.

CHAP. X.

Of Infants, Feme Coverts, &c. Respecting Bills of Exchange.

Who may draw and negotiate bills of exchange.

AS bills of exchange were firſt introduced for the convenience of commerce, it was formerly ſuppoſed that no perſon could be concerned in drawing or negotiating ſuch an inſtrument who was not an actual merchant; but the multiplied concerns of ſociety induced others, not in trade, to adopt the ſame mode of remittance, and it has ſince been decided that any perſon capable of binding himſelf by a contract may draw or accept a bill of exchange, or be in any manner engaged in the negotiation of it, and that he ſhall be conſidered as a merchant for that purpoſe. But it is not neceſſary in a declaration on a bill, to aver, that the defendant is a merchant. See ſtat. 5 *R. II. Lutw.* 891, 1585. 2 *Vent.* 292. 12 *Mod.* 36, 380. *Salk.* 126. *Kyd's Tr.* 28.

On the ſame principle, ſince the *ſtat.* 3 & 4 *Ann. c.* 9. any man, though not a merchant, may be a party to a promiſſory note.

Parties muſt be competent.

But it is eſſential to the validity of every contract, that there be proper parties to it, and that thoſe parties have capacity to contract. The parties to a contract are uſually only two, namely, the perſon binding himſelf to perform ſome act, and the perſon in whoſe favour that act is to be performed; but in the caſe of bills of exchange, notes, checks, &c. on account of the aſſignable quality, there may be, and uſually are, ſeveral other parties. *Chitty's Tr.* 18.

Infants and *feme coverts.*

With reſpect to competency it may in general be obſerved, that the law has wiſely taken care of the intereſts of thoſe who either have not judgment to contract, as in the caſe of infants; or having contracted are incapable of performing the contract; the law in general has therefore rendered the contracts of infants voidable, and thoſe of married women abſolutely void.

From the obſervations made on the daily actions of infants, as to their arriving to diſcretion, the laws and cuſtoms of every country have fixed upon particular periods on which they are preſumed capable of acting with reaſon and diſcretion: in our law the full age of man or woman is twenty-one years. 3 *Bac. Abr.* 118.

If

If a bill is beneficial to a minor, payment to him would be valid. *Poth. pl.* 166. But a payment to a married woman, after knowledge of that fact, would not discharge the person making it. *Id.* 167. Beneficial bill to a minor.

A married woman, in general, can bind herself by no contract; nor can she, without a special authority, bind her husband, except it be for such necessaries as are suitable to his rank: it is therefore clear that a bill of exchange or promissory note, to which she is a party, is of no force.

A *feme covert*, or married woman, is not to be considered as having an existence independent of her husband, though she is by particular custom, permitted to trade upon her separate account. *Black.* 1081. 4 *Durnf. & East*, 361. *Burr.* 1176. Married women may trade.

And if, in this case, she be sued in a superior court, her husband must be joined for conformity, and he may plead the custom in bar. 3 *Burr.* 1776, 1784.

A woman is considered as having an existence independent of her husband, who lives apart from him under articles of separation, has a separate maintenance, and acts and receives credit as a single woman. But see 4 *Durnf. & East*, 361, 766. 5 *Durn. & East*, 679. *Esp. Ca. Ni. Pri.* 6. Living apart

This, however, does not extend to the case of a woman eloping from her husband, and living apart from him. 2 *Black. Rep.* 1079. Eloping.

It may here be necessary to observe, that though a bill is drawn, indorsed, or accepted, by a person who cannot bind himself, it will nevertheless be valid against all those who are competent parties to the instrument. *Poth. pl.* 29.

Where the husband is under a civil disability of being in the kingdom; as where he is banished, or has abjured the realm, or has been transported, though but for a term of years; or where the husband is an alien enemy, residing out of the kingdom, a woman is considered as having an existence independent of her husband. *Co. Lit.* 132. *b.* 2 *Black. Rep.* 1197. *Salk.* 116. When the husband is banished, transported, &c.

A man may draw, accept, and indorse a bill by his agent, as well as by himself; and in these cases he is said to draw, accept, or indorse by procuration. As the doing either of these acts is the execution of a mere ministerial office, infants, *feme coverts*, persons attainted, outlawed, excommunicated May appoint an agent,

municated, aliens, and others incapable of contracting in their own right, so as to bind themselves, may be agents for these purposes. *Co. Lit.* 52. *a.*

by implication. And such authority may not only be express, but *implied*, and inferred from prior conduct of the principal: it is therefore said, that if an agent has upon a former occasion, in the principal's absence, usually accepted his bills, and the principal on his return approved thereof, it would bind him in a similar situation on a second absence from home. It has also been decided, that a subsequent assent will make the act of an agent binding on the principal. *Mar* 2. *Ed.* 105. *Lord Raym.* 930. 3 *Durnf. & East*, 757.

Caution is required in the choice of an agent. As the principal will be bound by every act of his general agent, even if he should exceed his authority; he should be cautious whom he authorizes, as the consequences may be fatal to him; and if such agent leaves his service he should acquaint his correspondents individually; for till such information is communicated to those with whom he has connections, an improper advantage may be taken, as he will be bound by acts done subsequent to leaving his service, if done before the communication of such intelligence.

CHAP. XI.

Of Bills of Exchange, &c. in cases of Bankruptcy.

Bankrupt's property vests in the assignees. IF a man becomes a bunkrupt, the property of bills and notes of which he is the payee or indorsee, vests in his assignees. And if in fact he indorse a bill and note after his bankruptcy, and that be discovered before it is paid, the assignees may recover it back from his indorsee in an action of trover; and if the money be received, they may recover the money in an action for so much money paid to their use. *Beawes*, 469, 470.

But it has been adjudged, that if a trader delivers a bill for a valuable consideration to another previous to an act of bankruptcy, and forgets to indorse it, he may indorse it after his bankruptcy. *Peake*, 50.

Payment

Payment to a person or his order, after knowing such person had committed an act of bankruptcy, would be inoperative. *Cooke's Bankrupt Laws*, 584, 5.

Of paying after an act of bankruptcy.

But a payment made to a bankrupt or his order, without notice of his being so, will in all cases discharge the person making it: and by a recent decision it appears, that if a debtor, after a secret act of bankruptcy of his creditor, gives him his acceptance in discharge of the debt, he may afterwards pay such acceptance to the holder of the bill; though after the acceptance, and before the bill became due, he heard of the drawer's bankruptcy: the giving, indorsing, or accepting a bill of exchange, being considered as an immediate payment, within the meaning of the statute of 1 *Jac.* 1. which protects *bona fide* payments made to a bankrupt, provided the bill is honoured when due. 5 *Durnf. & East*, 711.

Where no notice has been given.

And a payment made *by* a bankrupt to a person who had no notice of the bankruptcy, and being a *bona fide* creditor for goods sold, or by the bankrupt's having drawn, negotiated, or accepted a bill of exchange in the usual or ordinary course of trade and dealing, is protected by the statute 19 *G. II. c.* 32. which enacts, "that no person "who is or shall be really and *bona fide* a creditor of any "bankrupt, for or in respect of goods really and *bona* "*fide* sold to such bankrupt, or for or in respect of any "bill or bills of exchange really and *bona fide* drawn, "negotiated, or accepted by such bankrupt, in the usual "or ordinary course of trade and dealing, shall be liable to "refund or repay to the assignee or assignees of such "bankrupt's estate, any money which, before the suing "forth of such commission, was really and *bona fide*, and "in the usual and ordinary course of trade and dealing, "received by such person of any such bankrupt, before "such time as the person receiving the same shall know, "understand, or have notice that he is become a bankrupt, or that he is in insolvent circumstances."

Exception.

But this act, it is said, does not protect any payments but those expressly provided for; and therefore money paid by a trader after a secret act of bankruptcy to a carrier, for the carriage of goods, may be recovered by the assignees of the bankrupt. 5 *Durnf. & East*, 197.

Indulging with time.

And if the holder of a bill indulges the acceptor with time, on condition that he should allow interest, and he afterwards pays the bill, having first committed a secret

act of bankruptcy, this is not payment in the courſe of trade within the meaning of the ſtatute. 2 *Durnf. & Eaſt.*

So alſo, where *A*, having recovered a verdict againſt *B.* who afterwards committed an act of bankruptcy, and *A.* not having had notice thereof, took a bill drawn by *B.* on *C.* for the amount of the ſum recovered, payable at a diſtant period, which bill was afterwards paid; it was determined that this payment was not protected by the ſtatute, and conſequently that *A.* was liable to refund the money received by him to the aſſignees of *B.* 2 *H. B.* 334. *Chitty's Tr.* 154.

The holder of a bill not due may be a petitioning creditor.

By the 7 *G. I. c.* 31, and 5 *G. II. c.* 30, the holder of a bill or notes whether due or not at the time of the bankruptcy, may, *if in poſſeſſion of the bill at the time*, either be petitioning creditor upon that account, or prove it under the commiſſion; and even where it is not due, may receive a dividend of the bankrupt's eſtate like other creditors, deducting intereſt at the rate of 5*l. per cent.* only for the time the bill or note has to run: and the bankrupt in ſuch caſe is exonerated from all future demand on account of ſuch inſtrument, if he obtains his certificate, as much as if it had been due before the act of bankruptcy. *Chitty's Tr.* 222.

Accommodation bill may be proved.

Where a perſon has put his name to a bill or note to any amount, in order to accommodate another, and received a bill or note purporting to be to the ſame amount, as a ſecurity for having ſo done, he may prove ſuch bill or note, if in his poſſeſſion at the time of the bankruptcy, though he did not pay the accommodation bill till after the bankruptcy; the bill or note being a legal ſecurity, creates an abſolute debt at law, and conſequently gives a right to prove, though the holder may not have ſuſtained any damage at the time of ſuch proof. *Cooke's Bank. Laws*, 159 7 *Durnf. & Eaſt.* 366. *Eſp.* 134.

Bill drawn before, and accepted after bankruptcy.

When a bill or note is drawn before, but indorſed after the ſecret act of bankruptcy of the acceptor to another perſon, the indorſee may be a petitioning creditor for the amount, or prove it under the commiſſion, becauſe he ſtands in the place of the perſon from whom he received ſuch bill or note; and the debt is not created by the indorſement, but by the acceptance of the bill, or by making the note. *Cooke*, 19, 164. *Atk.* 72. 2 *Wilſ.* 155.

There

There is no doubt, and indeed it has been ſo decided, that if a perſon not having notice of the bankruptcy of the drawer, accepts a bill drawn on him after ſuch bankruptcy, he will be juſtified in paying his acceptance, although he has afterwards heard of the bankruptcy. 7 *Durnf. & Eaſt*, 711.

But he cannot ſet-off the amount of the ſum payable, to any demand on him by the aſſignees, becauſe the ſtatute 5 *G. II. c.* 30. relates only to mutual debts due before the bankruptcy. *Cooke*, 567. *Str.* 1234. Set-off.

A debt at law, notwithſtanding the ſtatute of limitations has incurred, will ſupport a commiſſion; for the ſtatute does not extinguiſh the debt, but the remedy, and the leaſt hint will revive it. 2 *Black. Rep.* 703. Statute.

Where the holder of a bill is entitled to prove, he may do ſo, not only under the commiſſion againſt the acceptor, but alſo under that which has iſſued againſt the drawer or indorſers; and he may maintain an action againſt any party to the bill, who is ſolvent. *Cooke*, 168.

Where a perſon poſſeſſed of a bill or note, applies to prove it, *before* he has received a part of the ſum engaged for in the inſtrument, he may prove for the whole amount under all the commiſſions, and receive a dividend on his whole debt out of each eſtate, provided he does not receive more than 20*s.* in the pound upon it; though between ſuch proof and the dividend, he may have received a part of the amount from a ſolvent or other party to the bill; but if the holder has received a part prior to his application to prove, he can only prove the remainder. *Cooke*, 151. 1 *Atk.* 107. 9. 2 *Vez.* 113. Applying to prove before any part has been received.

If a perſon has diſcounted bills for another, who afterwards becomes bankrupt, and the holder proves the whole amount of the bills: if any of the bills are afterwards paid in full, their amount muſt be deducted from the proof, and the future dividends are to be paid on the reſidue of the debt only. *Cooke*, 152. Bills diſcounted.

Where bills have been given as a ſecurity for a general balance, or for a debt exceeding their amount, and upon a bankruptcy the creditor has proved his whole debt, excepting ſuch bills; if any of them are duly honoured or paid, the ſum received on them muſt be taken as a payment in part, and the future dividends made upon the reſidue of the debt. *Cooke*, 119, 120, 156. Collateral ſecurity.

The party holding an accommodation bill or note, as ſuch inſtrument is for a valuable conſideration, may prove Holding an accommodation bill.

againſt all the parties but thoſe from whom he received it, to the whole extent of it, and receive the dividends, provided they do not exceed 20*s.* in the pound on the conſideration which he gave. *Cooke*, 157.

Of proving coſts and charges.

The coſts and charges of proteſting bills before an act of bankruptcy, may be proved; but not thoſe which may have afterwards occurred; nor is the holder of a bill or note entitled to any intereſt after the date of the commiſſion iſſued; nor, where the act of bankruptcy is aſcertained, to any accrued after the bankruptcy: but the creditor may prove the whole ſum for which the notes were given, notwithſtanding he received a diſcount at the rate of 5*l. per cent.* *Cooke*, 173. *Amb.* 172. 1 *Atk.* 140, 151. *Bailey's Sum.* 94.

On a queſtion, whether the coſts and charges, incurred by proteſting bills, after a commiſſion of bankruptcy iſſued, could be preved; Lord Hardwicke ordered that the coſts of the proteſts ariſen before the commiſſion ſhould be proved, but no part of the coſts ariſen afterwards. 1 *Atk.* 140.

Debts bearing intereſt.

And *Ex parte Moore.* 2 *Bro. Cha. Cas.* 597. Previous to the 5th of May 1785, Mrs. Tyler accepted ſeveral bills drawn upon her by Moore, and on that day committed an act of bankruptcy, but no commiſſion iſſued until the 9th of March 1786; the bills became due between May 1785, *and* March 1786; and Mrs. Tyler not paying them, Moore did: he alſo paid 298*l.* for damages and charges, and the intereſt amounted to 46*l.* 10*s.* The commiſſioners permitted Moore to prove the ſums for which the bills were drawn, but would not let him prove the intereſt, or the ſum paid for damages and charges; upon which he petitioned the Chancellor, but the Chancellor held that as the time when the act of bankruptcy was committed was aſcertained, he could not carry the damages beyond that time; and the petition was diſallowed.

Holder of a bill may ſue aſſignees.

A dividend of a bankrupt's eſtate having been declared by the commiſſioners, the holder of the bill may maintain an action againſt the aſſignees for his ſhare of the dividend, if they ſhould refuſe to pay him; and in ſuch action the proceedings before the commiſſion will be concluſive evidence of the debt; nor will the defendants, as aſſignees, be allowed to ſet-off any debt due from the plaintiff to the bankrupt. *Brown* v. *Buller*, *Doug.* 407.

Drawing

Drawing and re-drawing bills of exchange, may, in certain cases, be considered as trading, so as to render a party an object of the bankrupt laws. 1 *Atk.* 128. *Cowp.* 745.

The general rule, with respect to debts carrying interest, in case of bankruptcy, is that all interest ceases from the date of the commission; but if there be an estate sufficient to pay 20*s.* in the pound, and a surplus, interest shall then revive, and be paid up to the final discharge of the debt. 1 *Atk.* 75, 244.

Where the drawer or indorser is a bankrupt at the time when acceptance or payment is refused, it is not necessary to give notice to him or his assignee; and it has been adjudged that the absconding of the drawer will excuse the neglect to advise him. The sudden illness or death of the holder, or his agent, would also be an excuse for an omission of a regular notice to any of the parties, provided it is given as soon as possible after the impediment is removed; but it is said that the loss of an accepted bill is no excuse. *Poth. pl.* 125, 144.

Respecting the qualification of a petitioning creditor.

A question arising on the validity of a commission of bankruptcy, on account of the insufficiency of the debt due to the petitioning creditor, the facts appeared to be these: the bankrupt being indebted to the petitioning creditors in the sum of 115*l.* 3*s.* 8*d.* on the 15th of September 1784, drew a bill for 20*l.* on the defendant (who till the time of the bankruptcy, and of the bill becoming due, was a creditor of the bankrupt) payable to the petitioning creditors, two months after date, and paid it to them on account of part of their debt: the bill was presented for payment on the 18th of November following, and dishonoured. No notice however was ever given by the petitioning creditors to the bankrupt, or left at his house; a commission issued against the drawer on the 20th of November, on which he was declared a bankrupt in the afternoon of the 24th; that commission was afterwards superseded, and another commission was issued on the petition of the parties, on the amount of whose debt the present question arose. If the petitioning creditors, by not giving notice to the bankrupt of his bill being dishonoured, had made the bill their own, their debt was reduced within 100*l.* and then the commission could not be supported; but if notice was not necessary, the bill was not payment; their debt remained as it originally was, and the commission was valid. On the principles before stated, the

court held that notice in this caſe was not neceſſary, and therefore the commiſſion was good. *Bickerdike* v. *Bollman*, 1 *Durnf. & Eaſt*, 405.

A debt cannot be proved twice.

According to what was ſaid by Lord Kenyon, C. J. in the caſe of Cowley and Dunlop, if the holder who has proved under the commiſſion againſt the acceptor, has received dividends on the bill, proportionably with the other creditors, an indorſer who has afterwards been compelled to pay the remainder of ſuch bill, cannot come in and again prove the bill, becauſe the ſame debt cannot be proved twice under the ſame commiſſion. 7 *Durnf. & Eaſt*, 571, 2.

Where an indorſer has not proved before payment.

If the holder whom an indorſer has been obliged to pay, has not proved before ſuch payment, it ſeems doubtful whether the indorſer can afterwards come in under the commiſſion. According to ſome deciſions he may, on the preſumption that the debt accrues by the acceptance; but in others it has been adjudged, that the payment being after the bankruptcy, the indorſer cannot prove; becauſe, by the payment of the bill he acquired a new cauſe of action againſt the acceptor, and at the time of the bankruptcy he had no demand againſt him. This point has been ſeveral times litigated, but the laſt caſe on this queſtion is that of Cowley v. Dunlop, in which the court of King's Bench was equally divided. The judges were Mr. Juſtice Lawrence, Mr. Juſtice Groſe, Mr. Juſtice Aſhurſt, and Lord Kenyon. *Cooke's Ruki L.* 19, 165, 202, 269, 2 *H. B.* 640. *Cowp.* 525. *Str.* 1160. 3 *Wils.* 16. 7 *Durnford & Eaſt*, 565.

CHAP. XII.

Of Usury Reſpecting Bills, Notes, &c.

Uſury, what.

USURY, in its original and ſtrict ſenſe, is a contract upon the loan of money, to give the lender a certain profit for the uſe of it at all events, whether the borrower made any advantage of it, or the lender ſuffered any prejudice for the want of it; and in a more extenſive ſenſe it ſeems, that all undue advantages taken by a lender againſt a borrower, came under the notion of uſury. According

to

to the common law and ſeveral antient ſtatutes, all uſury is unlawful; but, at this time, neither the common or ſtatute law abſolutely forbid it. *Haw.* 245. 3 *Inſt.* 151, 152.

Antient prejudices againſt taking intereſt removed.

Whatever were the prejudices of early times againſt the taking of intereſt, they appear to have been worn off in the reign of *Henry VIII*; a rational commerce having taught the nation that an eſtate in money, as well as an eſtate in land, houſes, and the like, might be let out to hire without the breach of one moral or religious duty. And, indeed, when the ſource of this prejudice is examined, it will be found to have originated in a political, and not a moral precept; for though the Jews were prohibited from taking *uſury* [that is *intereſt*] from their brethren, they were in expreſs words permitted to take it from a ſtranger. 2 *Black.* 455, 456.

Rate of intereſt at different periods.

In the reign of *Henry VIII*, 10*l. per cent.* was allowed as the legal rate of intereſt; but by 5 & 6 *Ed. VI. c.* 20. it was obſerved that the ſtatute 37 *Henry VIII, c.* 9, allowing this rate of intereſt, had been conſtrued to give a licence and ſanction to all uſury not exceeding 10*l. per cent*; and this conſtruction was declared to be utterly againſt ſcripture; and therefore all perſons were forbid to lend or forbear by any device for any *uſury, increaſe, lucre*, or gain whatſoever, on pain of forfeiting the thing and the uſury or intereſt, and of being impriſoned and fined.

Till it became reduced to 5 per cent.

And thus the law ſtood till ſtat. 13 *Eliz. c.* 8, which revived the ſtatute of 37 *Henry VIII, c.* 9. and ordained that all brokers ſhould be guilty of a *premunire* who tranſacted any contracts for more; and the ſecurities themſelves ſhould be void. By the 21 *Jac. I, c.* 17. the rate of intereſt was reduced to 8*l. per cent.* and it having been lowered in 1650, during the uſurpation, to 6*l. per cent.* the ſame reduction was re-enacted after the reſtoration, by 12 *C. II. c.* 13. And laſtly, the rate of intereſt was reduced to 5*l. per cent.* by 12 *Anne, ſt.* 2, *c.* 16.

Penalty for taking uſurious intereſt.

The 12 *Anne, ſt.* 2, *c.* 16, enacts, that no perſon, upon any contract which ſhall be made, ſhall take for the loan of any money, wares, &c. above the value of 5*l.* for the forbearance of 100*l.* for a year; and all bonds and *aſſurances* for payment of any money to be lent upon uſury, whereupon, or whereby there ſhall be reſerved or taken above five pounds in the hundred, ſhall be void; and every

perſon

perſon which ſhall receive, by means of any corrupt bargain, loan, exchange, chevivance, ſhift or intereſt of any wares or other things, or by any deceitful way, for forbearing or giving day of payment for one year, for their money or other things, above 5*l.* for 100*l.* for a year, &c. ſhall forfeit treble the value of the money or other things lent.

Bill of exchange void on an uſurious contract.

If a bill of exchange or note is given, in conſequence of an uſurious contract, it is abſolutely void, when in the hands of an innocent perſon, who may have taken it in the fair and regular courſe of buſineſs, without any notice of the uſury: and evidence of uſury will be a good defence in an action brought upon ſuch bill or note againſt the drawer, acceptor, or indorſer. *Doug.* 708. So in caſe of gaming debts; the borrower may be a witneſs, though the money is not paid, if the uſury neither affects the debt, nor avoids the contract: and where the matter is doubtful, the objection ſhall only go to his credit, and not to his competency as a witneſs. 1 *Durnf. & Eaſt*, 153.

Premium.

If there is an agreement to pay legal intereſt, and a premium is paid down over and above the intereſt, the agreement is uſurious and void.. 1 *Doug.* 235.

But the penalty is not incurred if the premium itſelf does not exceed legal intereſt, nor till more than legal intereſt is actually received. *Id.* An action may therefore be brought for the penalty, though more than a year has elapſed ſince the payment of the premium, if it is not a year ſince what has been paid exceeded legal intereſt. *Id.*

Where an agreement will admit of a fair conſtruction.

E. 32 *G. III*, *Le Grand* v. *Hamilton*, a memorandum indorſed on a bond, which was conditioned for the payment of 100*l.* by quarterly payments of 5*l.* each, and with intereſt at 5*l. per cent*, "that at the end of each year, the year's intereſt due was to be added to the principal, and then the 20*l.* received in the courſe of the year was to be deducted, and the balance remain as principal," was held not to be uſurious, becauſe the intention of the parties might be to calculate the intereſt, at the end of the year, in the following manner:—For the firſt quarter, there would be intereſt on the whole ſum; for the ſecond, intereſt for the whole, *minus* the ſum already paid; and ſo on for the third and fourth quarter; and whatever that intereſt was, to be added to the principal. 4 *Durnf. & Eaſt*, 613.

It

It is not uſury for a country banker, in diſcounting bills, to take over and above 5*l.* diſcount, a commiſſion, agreeable to the *uſage*, on the amount of the bill. 2 *Durnf.* & *Eaſt*, 52. Country banker may take commiſſion.

But he muſt not take unreaſonable advantages, as appears from the following caſe. King's Bench, Guildhall, *Dec.* 18, 1793, *Matthews* v. *Griffith and Co.* This was a *qui tam* action on the ſtatute of uſury. The defendants are bankers at Portſmouth, and, in ſeveral inſtances, had diſcounted bills for a Mrs. *Stewart*, the proprietor of ſome ſilk works, at thirty days, at the rate of 5*l. per cent.*; but, inſtead of giving caſh, had given bills on London, at three days ſight. The fact was completely eſtabliſhed by the evidence. Mr. Erſkine endeavoured to defend his clients, on the ground that it was by the conſent of both parties, and for the convenience of Mrs. Stewart. The objection was over-ruled by Lord Kenyon, who ſaid he was confident it was uſury, and no lawyer whatever would be of a different opinion. They ought to have deducted the diſcount for their bills. But they muſt not take unreaſonable advantages.

An agreement to pay double the ſum borrowed, or other penalty on the non-payment of the principal debt at a certain day, is not uſurious, becauſe it is in the power of the borrower wholly to diſcharge himſelf, by repaying the principal according to the bargain. 1 *Haw.* 82.

So if a man lend another 100*l.* for two years, to pay for the loan 30*l.* but if he pay the principal at the year's end he ſhall pay nothing for the intereſt, this is not uſury; unleſs the clauſe of redemption be mere colour. *Cro. Jac.* 509. 5 *Rep.* 69. Conditional loan.

The receipt of intereſt before the time when it is in ſtrictneſs due, being voluntarily paid by the debtor, for the greater convenience of the creditor, or for any other ſuch like conſideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the firſt contract, does not make the party liable. 1 *Haw.* 82. Receiving intereſt before due.

The queſtion of uſury, or whether a contract is a colour and pretence for an uſurious loan, or is a fair and honeſt tranſaction, muſt, under all its circumſtances, be determined by a jury, ſubject to the direction of the court by a new trial. See *Cowp.* 112, 770. *Doug.* 708. 3 *Durnf.* & *Eaſt*, 351.

Where the bargain is merely caſual, and the whole depends upon a contingency, the contract is not uſurious; but Where depending on a contingency.

but if the intereſt *only* be hazarded on ſuch a contract, and the principal is ſecured, the whole is uſurious. 5 *Bac. Abr.* 415. *Cro. Jac.* 508.

Reſpecting foreign countries.

But if a contract, which carries intereſt, be made in a foreign country, our courts will direct the payment of intereſt according to the law of that country in which the contract was made. Thus *Iriſh*, *American*, *Turkiſh*, and Indian intereſt have been allowed in our courts to the amount of 12*l. per cent.* For the moderation or exorbitance of intereſt depends upon local circumſtances; and the refuſal to enforce ſuch contracts would put a ſtop to all foreign trade. 2 *Black.* 463.

Contract voids the ſecurity.

If a man gives a uſurious bond, and tenders the whole money, yet if the party will take only the legal intereſt, he ſhall not forfeit the treble value by the ſtatute. 4 *Leon.* 43. But though the treble value is not forfeited, unleſs ſomething be *taken* above the legal rate; yet the contract *alone* voids the ſecurity. 1 *Haw.* 82. *Cro. Eliz.* 20.

Upon an information upon the ſtatute of uſury, he who borrows the money may be a witneſs after he has paid the money. 1 *Lord Raym.* 192. 2 *Roll. Abr.* 685.

Intereſt on money in Ireland, &c.

By 14 *G. III. c.* 79, all mortgages and other ſecurities upon eſtates and other property in Ireland, or the plantations, bearing intereſt not exceeding 6*l. per cent.* ſhall be legal, though executed in the kingdom of Great Britain, unleſs the money lent ſhall be known at the time to exceed the value of the thing in pledge; in which caſe, alſo, to prevent uſurious contracts at home, under the colour of ſuch foreign ſecurities, the borrower ſhall forfeit treble the ſum ſo borrowed.

Taking an advantage.

A contract reſerving to the lender a greater advantage than is allowed by the ſtatute of uſury, is equally within the meaning of it; whether the whole be reſerved by way of intereſt, or in part only under that name, and in part by way of rent for a houſe, let at a rate plainly exceeding the known value. *Cro. Jac.* 440.

Intention of the parties.

The conſtruction of caſes of this nature, muſt be governed by the circumſtances of the whole matter, from which the intention of the parties will appear, in making the bargain; and if it was in truth uſurious, it is void, however it may be diſguiſed by a ſpecious aſſurance. 1 *Haw.* 82. 5 *Rep.* 69.

Bankers may retain the diſcount.

It may not be improper here to obſerve that, in diſcounting a bill or note, the diſcount may be retained; for it has been adjudged, that intereſt may be as lawfully received

received before-hand for forbearing, as after the term is expired for having forborne: it ſhould not therefore be reckoned merely as a loan of the balance, for in that caſe every banker in London, who takes 5*l. per cent* for diſcounting bills, would be guilty of uſury: for if, upon diſcounting a 100*l.* bill at 5*l. per cent.* he deducts the 5*l.* he may be conſtrued to have lent only 95*l.* (that is, ſuppoſing the bill or note to have twelve months to run), and he has received intereſt for five pounds more than the principal ſum advanced, which is above the legal rate. But this doctrine ſeems only applicable to bills, promiſſory notes, and other negotiable inſtruments, and not to bonds. 2 *Bla. Rep.* 792. 3 *Ord on Uſury*, 54. 3 *Wilſ.* 256, 262. *Chitty's Tr.* 54. An improper uſe might, however, be made of this indulgence (if ſo it may be called), by iſſuing bills or notes for large ſums, to become due at a very diſtant period; inſtead of giving bonds, which, on account of the late additional ſtamps, are now very expenſive; and thereby injuring the revenue, by holding out a colourable pretext for money-lenders to take ſo apparent an advantage.

CHAP. XIII.

Sundry Obſervations and Deciſions reſpecting Bills of Exchange, &c.

Engagement of the ſeveral parties.

BY the very act of drawing a bill, a perſon comes under an implied engagement to the payee, and to every ſubſequent holder fairly entitled to the poſſeſſion, that the perſon on whom he draws is capable of binding himſelf by acceptance; that he is to be found at the place of which he is deſcribed to be, if that deſcription be mentioned in the bill; that if the bill be duly preſented to him, he will accept it in writing on the bill itſelf according to its tenor; and that he will pay it when it becomes due, if preſented in proper time for that purpoſe. *Kyd's Tr.* 109.

Conſequences of a default.

In default of any theſe particulars, the drawer is liable to an action at the ſuit of any of the parties before-mentioned, on due diligence being exerciſed on their parts, not only for the payment of the original ſum mentioned in the

bill, but alſo in ſome caſes for damages, intereſt, and coſts: and he is equally anſwerable whether the bill was drawn upon his own account, or on that of a third perſon; for the holder of the bill is not to be affected by the circumſtances that may exiſt between the drawer and another: the perſonal credit of the drawer being pledged for the honour of the bill. *Beawes*, 469.

A note or bill payable by inſtalments.

Where a bill or note is payable by inſtalments, and it contains a clauſe that, on failure of payment of any one inſtalment the whole ſhall become due, the holder, on ſuch failure, can recover the whole amount of the ſum for which it was given; but where there is not ſuch a clauſe in the inſtrument, it ſeems doubtful whether the holder can legally take a verdict for more than the inſtalment due. According to the caſe of Beckworth againſt Nott, and ſeveral other caſes cited by Lord Loughborough in that of *Rudder* v. *Price*, the plaintiff is entitled to the whole ſum for which the note was given; but according to other caſes, and particularly that of *Aſhford* v. *Hand*, the plaintiff is only entitled to the inſtalments due at the time of commencing the action. Where, at the time of trial, nearly all the inſtalments are due, the jury will frequently give the whole ſum in damages, in order to avoid another action. If the plaintiff takes a verdict for more than the ſum remaining due, the court will either make him correct the verdict, and pay any expence the miſtake may have occaſioned, or grant a new trial. *Cro. Jac.* 505. 1 *H. B.* 551. 1 *H. B.* 88. *Cowp.* 571. *Bailey's Sum.* 90. *Chitty's Tr.* 213.

Taking a verdict for too much.

Pierſon v. *Dunlop*. In an action againſt the acceptor upon a bill for 300*l.* the plaintiff took a verdict for the whole ſum; the defendant filed a bill againſt him in the Exchequer, and he admitted in his anſwer that he had previouſly received 180*l.* from the drawer: this, among others, was urged as a ground for a new trial, and after cauſe ſhewn Lord Mansfield ſaid, "The verdict is certainly taken for 180*l.* more than was due; there was no admiſſion of this payment at the trial, which was very wrong, and has been the occaſion of filing a bill in the Exchequer, therefore there ought to be a deduction of the money received, and a proportionable part of the intereſt, together with all the coſts in the Exchequer:" and though the court diſcharged the rule, they made the plaintiff remit the 180*l.* with intereſt upon it from the time it was paid, and pay the coſts of the bill and anſwer in the Exchequer. *Cowp.* 571.

Where

Where intereſt is expreſſed to be payable in the inſtrument itſelf, there cannot be a doubt of its being recoverable; and, as appears by ſeveral deciſions, intereſt is generally payable on all liquidated ſums from the time the principal is due: it is recoverable on bills and notes payable at a day certain, or after demand (if payable on demand), for money lent, and for money paid; but not for goods, ſold, and work and labour. 3 *Wilſ.* 265. *Bla. Rep.* 761. *Burr.* 1077. 1 *H. B.* 305. Where intereſt is expreſſed to be payable.

In ſome caſes intereſt is ſaid to be payable from the date of the note, as where it clearly appeared on the face of it to have been given for money lent; but, generally ſpeaking, it carries intereſt only from the time of the demand of payment, unleſs the delay was occaſioned by the defendant, as by his being abſent from the kingdom, &c. when it was due; for intereſt being in the nature of damages for non-payment, the holder ought not to acquire a benefit by his own laches, and ſubject the drawer, acceptor, or indorſer, to damages, when they are blameleſs. On this principle it appears to have been adjudged, that intereſt is only payable from the time the proteſt is made. A neglect to proteſt an inland bill for 20*l.* or upwards, will perhaps preclude the holder from recovering ſuch intereſt or expences from perſons entitled to notice of the non-acceptance or non-payment; but it will not preclude his recovering from any other perſon. *Prac. Reg.* 357. 6 *Mod.* 138. 10 *Mod.* 38. 2 *Bla. Com* 469. *Bailey's Sum.* 91. See *Stat.* 3. & 4. *Anne, c.* 9. When to be reckoned from the date of the note.

In *Blaney* v. *Bradley*, the court held, that in actions upon promiſſory notes, payable on demand, intereſt ſhould be given from the time of the demand proved; but in this caſe, where it appeared upon the face of the note to be for money *lent*, intereſt ſhould be given from the date of the note. 9 *Mod.* 138.

The only expence the holder can be put to by the diſhonour of a bill or note, is that of the charge for noting and proteſting; and therefore he can demand no more of any of the parties to it than a ſatisfaction for that offence. But a party who has been obliged to pay the holder, in conſequence of the acceptor's refuſal, is frequently put to other expences by the return of the bill; ſuch as re-exchange, poſtage, commiſſion, and proviſion. Re-exchange is the expence incurred by the bill being diſhonoured in a foreign country, where it was payable, and returned to that in which it was made or indorſed, and there taken up: the

amount of it is regulated by the courſe of the exchange between the countries through which the bill has been negociated. 2 *Durnf. & Eaſt*, 52.

Suffering a long time to elapſe after a bill became due without calling on the acceptor.

Dingwall v. *Dunſter*. *Douglas*, 235, 247. Dunſter accepted a bill merely to lend his credit, and to accommodate Wheate the drawer. *Fitzgerald*, the payee, indorſed it to Dingwall, and delivered it to him in payment for jewels. After it became due, the plaintiff, underſtanding that the acceptor never had any thing for it, and that Wheate was the real debtor, wrote to one *Ready*, *Wheate's* attorney, on the 6th of February, and on the 4th of November 1775, preſſing him for the payment. Dunſter, on the 13th of February 1775, wrote a letter to Dingwall, thanking him in ſtrong terms for not proceeding againſt *him*, but mentioning in the ſame letter, that he had been informed by a perſon who had been ſent from him to Dingwall on the buſineſs, that Wheate had taken up the bill, and given another to Dingwall's ſatisfaction. It did not appear that Dingwall took any notice of that letter. But he for ſome time received intereſt on the bill from Wheate, and alſo the principal due by another bill, made at the ſame time, and drawn and accepted by the ſame parties, and under the like circumſtances. The plaintiff ſuffered ſeveral years to elapſe without calling on Dunſter, or treating him as his debtor. The queſtion was, whether the plaintiff, by his conduct, had diſcharged the acceptor; and the court unanimouſly held that he had done nothing from which it could be concluded he meant to abandon his claim againſt him. He had done right in applying to Wheate for payment, as he was appriſed that he was in fact the debtor, and Dunſter was ſo far ſenſible of his kindneſs as to thank him for his indulgence in a letter: had the ſuggeſtion in that letter been true, relative to the plaintiff's having delivered up the bill to Wheate, that might have made a material difference; but the plaintiff having returned no anſwer to the letter, and the fact not having been attempted to be proved at the trial, it is probable the aſſertion was not warranted.

Concerning a note for which no value was given.

De Bert v. *Atkinſon*. In an action againſt the payee of a note, it appeared that the note was not preſented for payment till the day after it became due, and that no notice was given to the defendant till five days after ſuch preſentment; but it alſo appearing that the defendant gave no value for the note, that he lent his name merely to give it credit, and that he knew at the time that the maker

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was inſolvent, *Eyre*, C. J. directed the jury to find for the plaintiff, which they did. A rule to ſhew cauſe why there ſhould not be a new trial was afterwards granted, and upon cauſe ſhewn, per *Eyre*. C. J. "If the maker is not known to be inſolvent, inſolvency will not excuſe the want of an early demand; but knowledge excludes all preſumption which could otherwiſe ariſe; here the money was to be raiſed upon the defendant's credit; he meant to guarantee the payment, and no loſs could happen to him from the want of notice." And per *Buller*, J. "The general rule is only applicable to fair tranſactions. Where the bill or note has been given for value in the ordinary courſe of trade, it is ſaid inſolvency does not take away the neceſſity of notice; that is true where value has been given, but no further; here the defendent lent his name merely to give credit to the note, and was not an indorſer in the common courſe of buſineſs." *Heath* and *Rooke*, Js. concurring, the rule was diſcharged. 2 *H. B.* 336.

Where not entitled to notice.

In *Corney* v. *Da Coſta* and Co.—*Eſpinaſſe*, 302. Da Coſta and Co. compounded with their creditors, and to ſecure the compoſition drew notes in favour of the defendant, which he indorſed to the creditors. The defendant took effects of Da Coſta and Co. at the time, to the amount of the compoſition; and an action being brought againſt him upon one of theſe indorſements, he inſiſted that he had no notice of the non-payment of the note until five weeks after it was due; but *Buller*, J. held he was not entitled to notice, and the plaintiff had a verdict.

Where notice is neceſſary.

But in *Staples* v. *Okines*—*Eſpinaſſe*, 332. In an action againſt the drawer of a bill, the defence was want of notice; the plaintiff thereupon called the acceptor, who proved that when the bill was drawn he was indebted to the defendant in more than the amount of the bill, but that he then repreſented to the defendant that it would not be in his power to provide for the bill when it ſhould become due, and that it was therefore then underſtood between them that the defendant ſhould provide for it, and it was contended that this ſuperſeded the neceſſity of giving the defendant notice; but Lord *Kenyon* held it did not, and non-ſuited the plaintiff.

What is not an acceptance.

Though it is ſaid a very ſmall matter will amount to an acceptance, and that any words which do not put a negative on the requeſt will be ſufficient; yet ſee the caſe of *Powel* v. *Jones*, *Eſpinaſſe* 17. In an action againſt the defendant as acceptor of a bill, the only evidence to prove the acceptance was, that when the bill was called for he

returned it, and ſaid, "There is your bill, it is all right." Lord *Kenyon* thought theſe words could by no implication amount to an acceptance, and non-ſuited the plaintiff.

Conditional acceptance depends upon circumſtances.

Maſon v. *Hunt*—*Doug* 284, 297. Rowland Hunt, in Dominica, agreed with a houſe there that his partner Thomas Hunt, in London, ſhould in conſequence of a cargo, of tobacco being conſigned to him, with the bills of lading, and an order for inſurance, accept ſuch bills as that houſe ſhould draw on him at the rate of 80*l.* per hogſhead: inſurance for the ſum of 3600*l.* was ordered on forty hogſheads of tobacco, which Thomas Hunt procured for a premium of 303*l.* Bills were afterwards drawn on him for 3200*l.* payable to one of the partners of the houſe, on account of forty hogſheads of tobacco, and indorſed by Rowland Hunt to Maſon. The bills arrived and were preſented for acceptance. Thomas Hunt refuſed to accept them, ſuppoſing the tobacco was not worth the money at which it was rated. After a negotiation of ſome days, Maſon took the bill of lading, and the policy of inſurance out of the hands of Thomas Hunt. When the tobacco arrived, it was ſold by the plaintiff Maſon, and produced no more than 1400*l.* Under the direction of Lord Mansfield, a verdict was given for the defendant, and on an application for a new trial, his lordſhip ſaid.—An agreement to accept may in many inſtances, amount to an acceptance: but an agreement is ſtill but an agreement, and if it be conditional, and a third perſon, knowing of the conditions annexed to the agreement, take the bill, he takes it ſubject to ſuch agreement. Here were ſeveral things ſpecified as the conditions of the acceptance—the number of hogſheads to be delivered—of a certain value rated by the hogſhead—the inſurance—the bills of lading—the conſignment. On the face of the agreement, I thought at the trial, and ſtill incline to think, that the meaning of the parties was, that tobacco ſhould be conſigned which would be worth 80*l.* per hogſhead: this fell immenſely ſhort of that value. It is plain the *Hunts* never *meant* to be in advance, and I think ſo great a difference in the value ſuch a fraud as to entitle the defendants to relief *againſt the agreement.* But as to this the reſt of the court have doubted, becauſe there is no evidence to ſhow how the decreaſe in the value aroſe. But the reſt of the court are extremely clear that the ſubſequent conduct of the plaintiff makes an end of the whole, and I think the reaſons are unanſwerable. That part of the

the caſe ſtands thus. The Hunts ſay, "we are not bound: this is an impoſition: the tobacco is of inferior value. The letter repreſents it as worth 80*l.* the inſurance makes it 90*l.* per hogſhead; and it turns out not to be worth 40*l.*" If Maſon had meant to ſay, "you are liable, and ſhall pay the bills," what would his conduct have been? He would have left the policy of inſurance and the bills of lading in their hands, and ſued them upon the acceptance. The temptation to accept was the commiſſion on the aſſignment, and they were to have the ſecurity of the goods and the inſurance. But the plaintiff undoes all this, and ſays, then I will take all from you, ſecurity, commiſſion, &c. This was ſaying, "I will ſtand in your place, but not ſo as to be anſwerable for more than the produce of the tobacco." It is impoſſible the defendants could mean to accept, without any benefit or ſecurity. We are all clear that this made an end of the agreement. *Kyd's Tr.* 162.

Of bringing ſeparate actions againſt the parties.

If the holder of a bill of exchange brings ſeparate actions againſt the acceptor, the drawer, and indorſers, at the ſame time, the court will ſtay the proceedings in any ſtage of the action againſt the drawer, or any one of the indorſers, upon payment of the amount of the bill, and the coſts of that particular action; but the action againſt the acceptor will only be ſtayed on the terms of his paying the coſts in all the actions, he being the original defaulter. 4 *Durnf. & Eaſt*, 691. *Str.* 515. See *Bla. Rep.* 749.

Note payable jointly or ſeverally.

Where a note is given by two, to pay jointly *or* ſeverally, the payee may ſue both or either; if he ſue both, he may declare on the note in the words of it jointly *or* ſeverally; but if he ſue either of them ſingly, it was formerly held that he could not declare in that way, but that he muſt ſtate the note as given only by one; and that the joint *or* ſeveral note would be good evidence to ſupport ſuch a declaration. *Str.* 76. 2 *Lord Raym.* 1544. 2 *Str.* 819.

How to be ſtated in the declaration.

But it is now held, that in an action on a joint or ſeparate promiſſory note againſt one, a declaration that he and another made their promiſſory note, by which they *jointly and ſeverally* promiſed to pay, is good; for if *or* muſt be underſtood as a diſjunctive, the election whether the note ſhall be joint or ſeveral, is in the perſon to whom it is given, and by ſuing one, he ſhews his election to conſider it as a ſeveral note; but in this caſe the true conſtruction of the word *or* is, that it is ſynonimous with *and*. They both

both promiſe that *they* or *one of them* ſhall pay; therefore the liability is on *both*, and on each. The nature of the tranſaction demands this conſtruction. *Rees* v. *Abbot*, *Cowp.* 832. *Kyd's Tr.* 186.

And per *Buller*, J. If the note had been jointly only, and it had been ſtated as a ſeveral one, no advantage could have been taken of this but by a plea in abatement.

Of reindorſing. A perſon who has indorſed a bill or note cannot, in general, maintain an action on a re-indorſement to him, againſt the party to whom he indorſed. In *Biſhop* v. *Hayward*, 4 *Durnf. & Eaſt.* 470. Biſhop declared on a promiſſory note made by *Collins* payable to Biſhop or order, and afterwards indorſed by him to the defendant Hayward, who afterwards re-indorſed it to Biſhop. On the general iſſue a verdict was given for the plaintiff: a motion was made in arreſt of judgment, on the ground that there was no cauſe of action ſtated on the record. The court ſaid, that the conſequence of ſupporting this verdict would be, that the plaintiff, without having any real demand on the defendant, might recover againſt him by the judgment of the court, without allowing the defendant a poſſibility of defending himſelf; that on the trial it was only neceſſary for him to prove that the note in queſtion was given, as ſtated in the declaration, payable to the plaintiff; that it was indorſed by him to the defendant, and re-indorſed by the latter to the plaintiff. The defendant could not deny theſe facts, and on proving them he had proved his whole declaration, and therefore entitled to a verdict. But the court were bound to ſee whether, on this ſtatement of the caſe, the plaintiff had ſhewn ſufficient to entitle him to judgment. There might be circumſtances which, if diſcloſed on the record, might entitle the plaintiff to recover againſt the defendant on this note, as if he had ſtated that his own name was originally uſed for form only; and that it was underſtood by all the parties, that the note, though nominally made payable to the plaintiff, was in reallity to be paid to the defendant; but then the note ſhould have been declared on according to its legal import. Here nothing appeared but that the plaintiff, being the original indorſer of the note, called on the defendant, who appeared upon the record to be a ſubſequent indorſee. Nothing could be clearer in law than that an indorſee might reſort to any of the preceding indorſers for payment; but the preſent action was an attempt to reverſe this rule. The court could

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in this caſe, preſume nothing but what was ſtated in the record; the caſes where preſumption was admitted were where the plaintiff ſtated a title defective in form, not were he had ſhewn a title defective in itſelf, which was the caſe here.

The original contract on negotiable bills and notes is to pay to ſuch perſon as the payee or his indorſees ſhall direct. When the payee aſſigns it over, he does it by the law of merchants; for being a *choſe in action*, it is not aſſignable by the general law. The indorſement is part of the original contract, as incidental to it, and muſt be underſtood to be made in the ſame manner as the inſtrument was drawn: the indorſee holds it in the ſame manner, and with the ſame privileges and powers as the original payee, as a transferable inſtrument, which he may indorſe over to another, and that other to a third, &c. 2 *Burr.* 1226. The original contract on negotiable bills.

Hence it has been often ſolemnly ſettled, that it is no objection to the claim of an indorſee, that the indorſement to him does not contain the words "to order."

In one caſe, viz. that of *More* v. *Manning*, *Com.* 311, it appeared that Manning had given a promiſſory note to Statham or order; Statham indorſed it to Wetherhead, but did not add, "or to his order," and Wetherhead indorſed it to the plaintiff, who, on non-payment at the time, brought an action againſt Manning. The defendant contended, that as there were no expreſs words to authoriſe Wetherhead to aſſign it, he had no ſuch power; but the whole court reſolved, that as the bill was at firſt aſſignable by Statham, as being payable to him or order, and as all Statham's intereſt was transferred to Wetherhead, the right of aſſigning it was transferred alſo, and the plaintiff had judgment. Bill payable to order.

In the caſe of *Acheſon* v. *Fountain*, the plaintiff had declared on an indorſement made by *William Abercrombie*, by which he appointed the payment to be to *Louiſa Acheſon*, "or order." On producing the bill in evidence, it appeared to be originally made payable to Abercrombie or order; but Abercrombie's indorſement was in theſe words —"Pray pay the contents to *Louiſa Acheſon*." It was objected that the indorſement did not agree with the declaration. This being ſtated in the declaration as an indorſement to Acheſon, or order, it was objected that it was a fatal variance. The court, however, gave judgment, on the ground of a general propoſition in law, that a bill is negotiable without the addition of theſe words to Of making an indorſement over.

the indorſement; the legal import of ſuch indorſement being, that the bill was payable to order, and that the plaintiff might on this have indorſed it over to another, who would have been the proper order of the firſt indorſer. *Str.* 457. *Bull. Ni. Pri.* 275.

The words, *or order*, originally omitted, but ſupplied by another.

The ſame point was again agitated on the following occaſion. *Edie* v. *Eaſt India Company*—Colonel Clive drew a bill, payable to Mr. Campbell, or order, on the Eaſt India Company, who accepted it. Mr. Campbell indorſed it to Mr. *Robert Ogilby*, but the words, "or order," being originally omitted, were inſerted by another hand before the trial. Ogilby indorſed it over to Meſſrs. *Edie* and *Laird*, or order, and afterwards, before the payment, became inſolvent. *Edie* and *Laird* brought an action againſt the Company as acceptors, who refuſed payment, alledging that Ogilby had no right to aſſign to the plaintiffs. At the trial, Lord Mansfield permitted the defendants to give evidence of a *uſage among merchants*, and the jury found for the defendants. On application for a new trial, the counſel in ſupport of the verdict reſted principally on the uſage which had been eſtabliſhed by the evidence; and with reſpect to the two caſes of *More* v. *Manning*, and *Acheſon* v. *Fountain*, they endeavoured to ſhew that they did not apply to this; the firſt, they ſaid, muſt have been an indorſement in blank, not to Wetherhead by name, and then his power to transfer it could not be doubted: and with reſpect to the ſecond, that did not decide the preſent queſtion, for it was only an objection on account of the declaration varying from the evidence: the plaintiff had clearly a right to recover, without entering into the general queſtion, for ſhe was the perſon to whom the bill was indorſed, and had not indorſed it over; and what the court was reported to have ſaid, "as to her power to have indorſed it to another, who would be the proper order of the firſt indorſer," was at leaſt extrajudicial, if not added by the reporter himſelf. But the court, on full deliberation, were of opinion, that the law was ſettled by thoſe two caſes, that ſuch an indorſement was good, and gave the indorſee a right of indorſing over: that the law having been ſo ſettled, no evidence of an uſage to it ought to have been admitted; that the law of merchants is the law of the kingdom, and part of the common law, and when once eſtabliſhed by judicial determinations, cannot be ſhaken. Where indeed the law of merchants is doubtful, the evidence of a cuſtom may be received; but even then it muſt be

be proved by facts, not by opinion only, and muſt be conſiſtent with the general principles of the law. 1 *Black. Rep.* 295. *Burr.* 1216. *Kyd's Tr.* 98.

Yet an indorſement may be reſtrictive, and then it operates to preclude the perſon to whom it is made from transferring the inſtrument to another, ſo as to give him a right of action, either againſt the perſon impoſing the reſtriction, or againſt any of the preceding parties. *See* page 25. of this work.

We have been very particular in ſtating the following recent caſe, as the circumſtances and deciſion are of the very laſt importance to the public.

July 16, 1801. Sittings before Lord *Kenyon* and a ſpecial jury; *Lawſon*, baronet, and others, *v. Weſton* and others. The leading counſel for the plaintiff ſtated, that the plaintiffs in this caſe were perſons of the higheſt reſpectability and honour, conſtituting the Richmond Bank in Yorkſhire, and brought this action againſt the defendants, very reſpectable perſons likewiſe, and conſtituting the firm of the Southwark Bank. The defence of this action was no reflection on the defendants, inaſmuch as they were merely nominal defendants, and were indemnified by the perſon actually intereſted. In Weſtminſter-hall, in Guildhall, and in the city of London, it was ſuppoſed, the queſtion that was now to be raiſed, had been at reſt ſince 1764, when the caſe of *Grant* and *Vaughan* was decided, and is reported in 3 *Burr.* 1516. This is preciſely the ſame caſe, without the poſſibility of being able to diſtinguiſh it. It was an action brought on a bill of exchange for 500*l.* by the plaintiffs, as indorſees, againſt the defendants, as acceptors. It would be lamentable in theſe times, as it had been juſtly obſerved by high authority, when we *eat and drink paper*, and *live upon paper*, if the plaintiffs were not entitled, in this caſe, to recover. The bill was drawn by Mr. *Vaſy*, at fifty days, on the defendant, who accepted in favour of a *Thomas Stokes*, who indorſed it to a *William Spiers*, who had the bill ſtolen from him. It then paſſed into the hands of a perſon who deſcribed himſelf as *J. Warren*; who took the paper in the ordinary way to the ſhop of the plaintiffs, in Richmond, and deſired to have it diſcounted. The confidential agent of this Bank, knowing Mr. Vaſy perfectly well, who lived in the neighbourhood, and he alſo knowing the reſpectability of the defendants, the acceptors, and ſeeing the bill regularly indorſed, did not heſitate to diſcount it. He was perfectly aware that the

Reſpecting country Banks.

perſons who brought this action againſt the acceptors, muſt be in a condition to ſhew they had paid a full and valuable conſideration for it. The caſe of *Grant* and *Vaughan* was decided againſt him. It was ſaid in that caſe, if it were decided in favour of the plaintiff, a perſon who found or ſtole a bill might bring an action upon it. "No (ſaid Lord *Mansfield*), becauſe the perſon who brought the action muſt ſhew that it came to him fairly." He ſhould prove that the preſent plaintiffs paid a full conſideration for it, and diſcounted it juſt as the Bank of England, or any private banker, would have done. He ſaid he ought to make an apology to his Lordſhip, and the gentlemen of the jury, for having waſted a minute of their time in ſtating it. The bill was dated March 30, 1801, drawn in favour of Mr. Stokes, and indorſed by him to Thomas Spiers, from whom this bill had been ſtolen. Lord *Mansfield*, in the caſe of *Grant* and *Vaughan*, ſaid, if one of the two perſons had been guilty of negligence, and the queſtion was, which of them ſhould bear the loſs, the anſwer was clear; he who had been guilty of negligence. Mr. Spiers, the holder of the bill, ought not to have indorſed it till he had been going to pay it away. If he had kept it unindorſed in his poſſeſſion, it would have been perfectly ſafe.

The bill was read. It was dated March 30, 1801. "Fifty days after date, pay to the order of Mr. Thomas Stokes 500*l.* value received. *William Vaſy.*" Accepted by the defendants, and indorſed *Thomas Stokes*, *William Spiers*, and *J. Warren*. The hand-writing of the parties was admitted. This was the plaintiff's caſe.

Mr. *Attorney General*, for the defendants, ſaid, they had not proved they had paid value for it.

Lord *Kenyon* ſaid, it was a very good *prima facie* caſe.

The leading counſel for the defendants ſaid, he did not riſe to diſpute any of the general propoſitions laid down by his learned friend. He admitted that a bill of exchange drawn, indorſed, and accepted, might be negotiated, and that any holder of ſuch bill, *bona fide*, for a valuable conſideration, might maintain an action upon it, although in the courſe of coming to him, it might be acquired by fraud, or even by theft, which was eſtabliſhed in the caſe of *Miller* and *Race*. But, he contended here, that unleſs a bill of exchange came in the fair and ordinary courſe of trade—unleſs it came without circumſtances that indicated any ſuſpicion—the holder was not entitled to recover. This

bill was offered to be diſcounted at the Richmond Bank, under ſingular circumſtances. After it had been accepted in London, at a conſiderable diſtance of time after it was drawn and accepted, and within three weeks of its becoming due, it was preſented at the Richmond Bank; and that impoſed on them that degree of attention, and that duty which was neceſſary to avoid impoſition; and which duty was exerciſed by other perſons when a bill of ſo large an amount was preſented by a man who was a total ſtranger. The Richmond Bank choſe to diſcount it, by giving 250*l.* in ſmall notes of their own, and a bill for the other 250*l.* payable on their agents in London. Now, it had been decided, that ſuch bill of exchange muſt appear to have been taken fairly and *bona fide* in the courſe of trade, and with the greateſt caution and prudence. That was a duty which every man, in negotiating bills of exchange, had a right to expect at the hands of another. Did there not exiſt in this caſe many circumſtances to impoſe the duty of inquiry? He would ſhew, by witneſſes, that it was an extremely unuſual thing, and he did not believe they could ſhew a ſingle inſtance of a bill of the magnitude of 500*l.* having been accepted in London, and, in the regular courſe of circulation, getting back again to Yorkſhire, and then diſcounted without a ſingle queſtion aſked. If theſe things were to be done—if one man did not lend another the aſſiſtance of his prudence and caution—impoſitions of this ſort would be endleſs. It was advertiſed ſeveral times in three or four of the London papers, in the moſt extenſive circulation, that ſuch a bill was miſſing, and deſiring the perſons, into whoſe hands it might come, to ſtop it. This bill had been drawn by a Mr. *Vaſy*, who is a gentleman in the neighbourhood of Newcaſtle, on his bankers in town, in favour of Mr. *Stokes*, his agent, who had paid it to Mr. *Spiers*, who carrying it to be diſcounted, it was ſtolen from him. It was ſome time before it became due—they had notice, and they might have ſtopped their own bill for 250*l.* They took no means of that ſort, but conducted themſelves with a culpable degree of negligence.

Lord Kenyon. What do you ſay is the amount of a bill that ought to paſs, as coming from a ſtranger?

The counſel ſuppoſed a bill for 10,000*l.* to be brought to any bank by a ſtranger—Was it for a banker immediately to fill his pocket with his own ſhop notes, or ought not rather the magnitude of the ſum to have ſtaggered him?

him? He ſhould prove, by bankers, that they would not have diſcounted it without making inquiry. But what was the beſt proof, they had done ſo, and not receiving ſatisfaction, the bill was returned. He ſhould prove that ſuch a bill circulating in the country, muſt neceſſarily excite ſuſpicion, and that they would have pauſed on ſuch a bill, and would not have diſcounted it in the manner the plaintiffs had done. They made no inquiry—they did not aſk a ſingle queſtion—but diſcounted the bill at once, from the avidity, which was extremely culpable in them, of getting into circulation a vaſt quantity of their own paper, which was productive of miſchief, and which he really thought required ſome public check. In prudence and juſtice they ought not to have diſcounted it. The deciſion in the caſe of *Peacock* and *Rhodes* had eſtabliſhed that ſome degree of caution ought to be uſed, in diſcounting bills to a man accredited in no ſhape whatever.

Lord Kenyan obſerved, that when a bill of the magnitude of 500*l.* was uſed as an argument, he dreaded that argument that reſted ſolely on the amount of the bill. He admitted ſuch expreſſions were uſed by great authorities; but when he found this exception, he doubted there was ſome little malady in the argument. When this bill was preſented at the Richmond Bank, ought they to have taken a horſe and come up to London to inquire of the acceptors? Some drafts to a very large amount were brought to town, by tenants to ſome great men, ought they to be ſent back to the country to trace the different hands through which ſuch drafts had paſſed? A noble Duke, to whom the country was as much indebted as any other man in it for the improvements he had made [*meaning the Duke of Bridgewater*] drew a draft for 100,000*l.* in favour of the public.

The counſel for the defendant ſaid, as it had come through the regular channel of that noble Duke, no perſon could ſuſpect it.

Lord Kenyon ſaid, if he could ſhew any blameable negligence in the Richmond Bank, he would do ſomething: but here was a bill accepted by a reſpectable houſe, circulating through the country, and got into the hands of a Mr. *Warren*, who unfortunately turned out to be a male Miſs *Robertſon*. I cannot tell, ſaid his Lordſhip, what to do with it—it would paralyze the whole trade of the country. I am not ſure if this defence was to be admitted, that it would not go to bills of 10*l.* and there would be

be a total end of all paper credit. Unleſs the jury infer culpable negligence in the plaintiffs or their agents, I do not know how the acceptors can defend themſelves againſt the payment of this bill. With reſpect to the advertiſement of this bill, in a number of the London newſpapers, I know from experience that ſuch meaſures may have been taken, and yet ſuch papers have not reached the parties in the country. If it had appeared that it had been inſerted in a paper that circulated in that part of the country, that perhaps might have been a degree of evidence. I remember when I was a counſel at the bar, an action brought in the county of Hereford to recover ten guineas. A reward to that amount had been advertiſed in a newſpaper that was circulated in that county, to any perſon who would produce a horſe that had been ſtolen. The advertiſement was ſigned by the defendant, and the horſe was found by the plaintiff, and reſtored. The defendant denied that he knew any thing of the advertiſement. An action was brought, and the ten guineas recovered, on the ground that, as the paper was read in that county, the jury inferred he muſt have known of the advertiſement.

Robert Wilkinſon, a witneſs, ſaid he was partner in a banking houſe with Mr. *Lumley*, at *Stockton*, and was applied to, to diſcount this bill. He knew the drawer. The perſon who brought it was not a well dreſſed man. It was their courſe never to diſcount bills that were brought by ſtrangers. He not only ſpoke of his own mode of dealing, but he had never heard of any inſtance of its being done before in the north.

Lord Kenyon aſked how far north it went—whether it was only to the Trent, or on the other ſide of it?

The witneſs did not anſwer to that queſtion; but, on a croſs examination, ſaid, he had come up to London for the purpoſe of this cauſe. The perſon who offered the bill to be diſcounted, from his appearance, excited his ſuſpicion. He could not conceive how a perſon of his appearance, could be honeſtly in poſſeſſion of a bill to that amount.

Mr. *Lightly* (clerk of the Northallerton bank) ſaid, he recollected a perſon offering the bill in queſtion to be diſcounted. He did not diſcount it becauſe he did not know the man. The perſon who offered the bill, was a man of very genteel appearance and good addreſs.

Lord

Lord Kenyon here obſerved, that the other witneſs would not diſcount it becauſe the perſon who brought it had not the appearance of a gentleman, and had no addreſs.

The witneſs farther ſaid, that he ſeemed to be a very well informed man. He was a total ſtranger to him. They frequently diſcounted bills for ſtrangers; but he never recollected a bill to ſuch an amount preſented by a ſtranger, before that, to be diſcounted.

Lord Kenyon remarked, that ſome country banks only diſcounted bank bills, for the circulation of their own paper. Men might lay down a particular rule to themſelves. Some were more ſcrupulous than others; and if the defendants could throw the leaſt ſuſpicion on the conduct of the plaintiffs, or of their not paying a valuable conſideration for this bill, he ſhould liſten to it with both his ears. There might be ſome conveniencies attending theſe banks, but there were alſo ſome inconveniencies; and they ought to be under ſome other regulations. His Lordſhip farther obſerved, that there are advertiſements in ſeveral newſpapers, which circulate in Derbyſhire, Nottinghamſhire, and other counties of England, ſtating that banks are to be opened in quarters—to ſay no more.—— I am very much alarmed for ſeveral great towns, where ſome perſons are going to open banking ſhops—perſons who, in London, where they are known, would not be truſted with one farthing.

Mr. *Smart* ſaid he was a banker in London, and it was not the cuſtom here to diſcount bills to a large amount for ſtrangers.

Mr. *Gibbs* obſerved that this was dangerous evidence.

Lord Kenyon ſaid there was no danger of informing a jury of merchants at Guildhall as to what is uſual for bankers in London to do.

Mr. *Barnewell* ſaid, that bankers in town commonly diſcounted bills only for their cuſtomers who kept accounts with them.

Lord Kenyon remarked, that he did not think what the witneſs ſaid was evidence. According to that you muſt take the gauge of every man's judgement, which would lead into a ſea of uncertainty.

The counſel ſaid, he wiſhed to ſhew the courſe of the trade.

Lord Kenyon replied, that the courſe of trade depended upon

upon the convenience of every man. He did not know where they would go. They would have no rule upon earth.

Mr. *Vaux* ſaid, he believed it was very well known that there was not the ſmalleſt analogy between a banker in London, and in the country.

The defendant's counſel obſerved, that the country bankers, who ought to exerciſe a greater degree of caution than bankers in London, uſed much leſs, from the deſire they had of circulating their own paper.

Mr. *Prieſtman*, who was clerk to the plaintiffs, was called upon to prove that they had paid a full and valuable conſideration for the bill in queſtion. He diſcounted the bill—he knew the drawer Mr. *Vaſy*—he had repeatedly diſcounted his bills before to a large amount. He gave a full and valuable conſideration for the bill in queſtion; he alſo knew Stokes's hand-writing; and a Mr. Stapleton, who was in their houſe at the time, knew the hand-writing of the defendants.

On croſs examination, he ſaid, he paid it by a bill on London for 250*l.* and the reſt in ſmall notes. The perſon who brought the bill ſaid his name was *Warren*. He had a reſpectable appearance: he ſeemed to be about ſixty, and looked as if he meant to reſide in the country. He had ſo much the appearance of a gentleman, that he made the draft payable to John Warren, Eſq. He ſaid he had never diſcounted a bill to ſo large an amount before to a ſtranger.

When the counſel for the defendant was aſking this gentleman why he had not been more particular in his inquiries, and aſked this man where he lived, &c.

Lord Kenyon aſked the counſel what he would have ſaid if any caſhier of a country bank had aſked him theſe queſtions? His Lordſhip ſaid ſuch queſtions went to the circulation of every bank note that had been iſſued.—"How came you by ſuch a note? It is not likely that a man, with ſuch a coat, ſhould be honeſtly in poſſeſſion of ſuch a note;—of a note to ſo large an amount."

The defendant's counſel obſerved, that in one of the caſes which had been decided on this ſubject, ſuſpicions reſted upon the man that offered the note, becauſe he had a round hat, and a great coat, and therefore was taken for a highwayman. But now, from the general dreſs of the country, according to theſe marks, every man was a highwayman.

Lord Kenyon obſerved, if they could not impute any thing to raiſe a fair ſuſpicion againſt the conduct of the plaintiffs, they had made out their caſe. Verdict for the plaintiffs, 500*l.*

For the ſatisfaction of our readers, we ſhall ſtate the caſe of *Grant* and *Vaughan*, as mentioned in 3 *Burr.* and referred to in the above deciſion.

Poſſeſſor for a valuable conſideration entitled to payment.

Grant v. *Vaughan*, 3 *Burr.* 1516. 1 *Bl. Rep.* 485. Vaughan, a merchant in London, gave to Bickwell, one of his ſhips huſbands, a draft on his banker Sir Charles Aſgill, payable to ſhip Fortune, or bearer. Bicknell loſt the draft; the perſon who found it, or at leaſt was in poſſeſſion of it, went four days after the note was payable, to the ſhop of *Grant*, a tradeſman at Portſmouth, and having bought ſome tea gave him the note in payment, and deſired to have the balance. *Grant* ſtepped out to make inquiry who Vaughan might be, and being informed he was a reſponſible man, and that the note was in his hand-writing, gave the change out of the note, retaining the price of the tea. *Vaughan* being appriſed that Bicknell had loſt the note, ſent notice to Sir *Charles Aſgill* not to pay it. Payment being accordingly refuſed, Grant brought his action againſt *Vaughan* as the drawer. The cauſe was tried by a ſpecial jury of merchants, who found for the defendant. On an application for a new trial, the court held that theſe notes were transferable by mere delivery, and however the true owner may have loſt them, the fair poſſeſſor, for a valuable conſideration, was entitled to the money. See alſo *Kyd's Tr.* 103.

Though the note has been ſtolen.

And in the caſe of *Miller* v. *Race*, alſo referred to in *Lawſon* v. *Weſton*. A bank note, payable to *William Finney*, or bearer, was ſtolen out of the mail in the night of the 11th of December 1756, and on the 12th came to the hands of the plaintiff, for a full and valuable conſideration, in the uſual courſe of buſineſs, and without any knowledge that it had been taken out of the mail. He afterwards preſented it at the bank for payment; and the defendant, being one of the clerks, ſtopped it, upon which an action of trover was brought: and upon a caſe reſerved upon the point, whether the plaintiff had a ſufficient property in the note to entitle him to recover, the court was clear in opinion that he had, and that the action was well brought. *Burr.* 451.

CHAP.

CHAP. XIV.

Stamps required on Bills of Exchange, Promissory Notes, Drafts, or Orders.

BY the 31 *G. III. c.* 25. and the 37 *G. III. c.* 90, the following duties are payable on the above-mentioned inſtruments.

Bills, Notes, Drafts, &c. payable on Demand.]—For every piece of vellum, parchment, or paper, upon which any bill of exchange, draft, or order for the payment of money *on demand*, ſhall be written, &c. where the ſum amounts to 40*s.* and does not exceed 5*l.* 5*s.* by 31 *G. III. c.* 25. *three pence*; 37 *G. III. one penny*; and by 41 *G. III. c.* 10. the additional ſum of *two pence*. Total 6*d.* Stamp from 40*s.* to 5*l.* 5*s.*

When the ſum ſhall be above 5*l.* 5*s.* and not exceeding 30*l.* by 31 *G. III. c.* 25, *ſixpence*; 37 *G. III. c.* 90, *two pence*; and by 41 *G. III. c.* 10. the additional ſum of *four pence*. Total, 1*s.* From 5*l.* 5*s.* to 30*l.*

When above 30*l.* and not exceeding 50*l.* by 31 *G. III. c.* 25, *nine pence*; 37 *G. III. c.* 90, *three pence*; and by 41 *G. III. c.* 10, the additional ſum of *ſixpence*. Total, 1*s.* 6*d.* From 30*l.* to 50*l.*

Above 50*l.* and not exceeding 100*l.* by 31 *G. III. c.* 25, *one ſhilling*; 37 *G. III. c.* 90, *four pence*; and by 41 *G. III. c.* 10, the additional ſum of *eight pence*. Total, 2*s.* From 50*l.* to 100*l.*

And where the ſum ſhall exceed 100*l.* and ſhall not exceed 200*l.* by 31 *G. III. c.* 25, *one ſhilling and ſixpence*; 37 *G. III. c.* 90, *ſixpence*; and by 41 *G. III. c.* 10, the additional ſum of *one ſhilling*. Total, 3*s.* From 100*l.* to 200*l.*

Where the ſum ſhall exceed 200*l.* by 41 *G. III. c.* 10, the additional ſum of *one ſhilling and four pence*. Total, 3*s.* 4*d.* Above 200*l.*

Any promiſſory note, or other note for the payment of money to the bearer *on demand*, which may be re-iſſuable from time to time, after payment, at the place where it was firſt iſſued, where the ſum amounts to 40*s.* and ſhall not exceed 5*l.* 5*s.* by 31 *G. III. c.* 25, *three pence*; 37 *G. III. c.* 90, *one penny*; and by 41 *G. III. c.* 10. *two pence*. Total, 6*d.* Notes re-iſſuable, from 40*s.* to 5*l.* 5*s.*

And where ſuch ſum ſhall exceed 5*l.* 5*s.* and not exceed 30*l.* by 31 *G. III. c.* 25, *ſixpence*; 37 *G. III. c.* 90, From 5*l.* 5*s.* to 30*l.*

two pence; and by 41 *G. III. c.* 10, the additional ſum of *four pence*. Total, 1*s.*

From 30*l.* to 50*l.* Above 30*l.* and not exceeding 50*l.* by 25 *G. III. c.* 25, *nine pence*; 37 *G. III. c.* 90, *three pence*; and by 41 *G. III. c.* 10, the additional ſum of *ſixpence*. Total, 1*s.* 6*d.*

From 50*l.* to 100*l.* Above 50*l.* and not exceeding 100*l.* 31 *G. III. c.* 25, *one ſhilling*; 37 *G. III. c.* 90, *four pence*; and by 41 *G. III. c.* 10, the additional ſum of *eight pence*. Total, 2*s.*

And where ſuch ſum ſhall exceed 100*l.* and ſhall not exceed 200*l.* by 31 *G. III. c.* 25, *one ſhilling and ſixpence*; 37 *G. III. c.* 90, *ſixpence*; and by 41 *G. III. c.* 10, the additional ſum of *one ſhilling* Total, 3*s.*

The perſon paying ſuch notes may iſſue them again. Where the promiſſory note ſhall be paid by the perſon by whom the ſame ſhall have been made or ſigned, and firſt iſſued, and at the place where the ſame were firſt iſſued, the perſon ſo paying the ſame, notwithſtanding ſuch payment may at any time afterwards, and ſo often as there ſhall be occaſion after every ſuch payment thereof, but not otherwiſe, again iſſue and negotiate ſuch notes; and every ſuch note is declared to be, *after payment*, but not otherwiſe, iſſuable and negotiable. But if ſuch notes ſhall be paid by any other than the perſon making or ſigning the ſame, or at any place other than the place of iſſuing, ſuch notes ſhall be conſtrued to be vacated and ſatisfied, and ſhall be no longer negotiable, but ſatisfied; and if any perſon ſhall again iſſue any ſuch note after payment by any perſon other than the perſon making the ſame, or at any place other than the place of iſſuing, or if any perſon named in ſuch note for payment thereof, ſhall after payment neglect or refuſe to cancel the ſame, ſuch perſon ſhall forfeit 20*l.* And if ſuch note ſhall not be cancelled, then, and as often as it ſhall be again iſſued, there ſhall be due, anſwered, and paid, the like duty as was firſt charged on ſuch note, to be payable by and charged on the perſon who ſhall again iſſue, and negotiate ſuch note.

Not re-iſſuable without ſtamping them with a proper ſtamp. But by 41 *G. III. c.* 10, *ſ.* 7. no note re-iſſuable by any act or acts in force before the paſſing of this act, ſhall, from and after the 5th of June 1801, be again iſſued after payment thereof, until it ſhall be brought to the head office to be ſtampt with a proper ſtamp; and the commiſſioners are required to cauſe the ſame to be ſtampt on payment of the duty by this act impoſed, on proof on oath before the ſaid commiſſioners that the ſame hath not been,

after

after any payment thereof, again iſſued ſince the 5th of *June* 1801, and that the ſame have not been laid aſide for the purpoſe of being cancelled, at any time before the paſſing of this act; and any ſuch promiſſory or other notes which ſhall be firſt iſſued, or negotiated after the ſaid 5th of June 1801, and which may be re-iſſued after any payment thereof, according to the regulations of the ſaid act again iſſued, being alſo firſt ſtampt with the proper ſtamp to denote the duty by this act impoſed, may be again iſſued from time to time in the manner allowed by the ſaid acts reſpectively; and all rules, regulations, duties, and penalties preſcribed or impoſed by the ſaid acts, or any of them, with reſpect to the ſtamping ſuch promiſſory or other notes, in order to iſſue the ſame from time to time, or with reſpect to the iſſuing or negotiating or cancelling ſuch notes after payment thereof, ſhall be applied and put in practice with reſpect to the ſecuring the duties by this act impoſed, according to the true intent and meaning of this act, as fully and effectually to all intents and purpoſes, as if the ſame had been ſeverally enacted in the body of this act.

Paying to bearer on demand.

For any promiſſory or other note, payable to the bearer on demand, which may be re-iſſued, after payment at the ſame or any other place than where firſt iſſued, where the ſum ſhall amount to 40*s.* and not exceed 5*l.* 5*s.* by 31 *G. III. c.* 25, *ſixpence*; 37 *G. III. c.* 90. *two pence*; and by the 41 *G. III. c.* 10, *four pence.* Total, 1*s.*

Above 5*l.* 5*s.* and not exceeding 30*l.* by 31 *G. III. c.* 25, *one ſhilling*; 37 *G. III. c.* 90, *four pence*; and by the 41 *G III. c.* 10, the additional ſum of *eight pence.* Total, 2*s.*

[It is declared that theſe notes may, as often as occaſion ſhall require, be again iſſued by the perſon making the ſame, notwithſtanding ſuch notes have been paid by the perſon making the ſame, or any other perſon in purſuance of any appointment for the payment thereof.]

Bills after date from 40*s.* to 30*l.*

Bills and Notes payable after date.] For every bill of exchange, draft, or order, payable otherwiſe than on demand, or any promiſſory or other note payable otherwiſe than to the bearer on demand, where the ſum ſhall amount to 40*s.* and not exceed 30*l.* by 31 *G. III. c.* 25, *ſixpence*; 37 *G. III. c.* 90, *two pence*; and by 41 *G. III. c.* 10, the additional ſum of *four pence.* Total, 1*s.*

And

From 30*l.* to 50*l.* And where ſuch ſum ſhall exceed 30*l.* and not exceed 50*l.* by 31 *G. III. c.* 25, *nine pence*; 37 *G. III. c.* 90, *three pence*; and by 41 *G. III. c.* 10, *ſixpence*. Total, 1*s.* 6*d.*

From 50*l.* to 100*l.* Above 50*l.* and not exceeding 100*l.* by 31 *G. III. c.* 25, *one ſhilling*; 37 *G.* 3. *c.* 90, *four pence*; and by 41 *G. III. c.* 10 *eight pence*. Total, 2*s.*

From 100*l.* to 200*l.* Above 100*l.* and not exceeding 200*l.* by 31 *G. III. c.* 25, *one ſhilling and ſixpence*; 37 *G. III. c.* 90, *ſixpence*; and by 41 *G. III. c.* 10, the additional ſum of *one ſhilling*. Total, 3*s.*

Exceeding 200*l.* On any promiſſory note, or note payable on demand or otherwiſe, where the ſum expreſſed therein, or made payable thereby, ſhall exceed 200*l.* there ſhall be charged, by 31 *G. III. c.* 25, *two ſhillings*; 37 *G. III. c.* 90, *eight pence*; and by 41 *G. III. c.* 10, the additional ſum of *one ſhilling and four pence*. Total, 4*s.*

Which duties ſhall be paid by the perſon making or ſigning ſuch bill, &c.

Foreign bills. *Foreign Bills of Exchange.*] Drawn in ſets, according to the cuſtom of merchants, where the ſum ſhall not exceed 100*l.* ſhall be charged, by 31 *G. III. c.* 25, *ſixpence*; 37 *G. III. c.* 90, *three pence*; and by the 41 *G. III. c.* 10, the additional ſum of *four pence*. Total, 1*s.* 1*d.*—Where the ſum ſhall exceed 100*l.* and not 200*l.* 31 *G. III. c.* 25, *nine pence*; 37 *G. III. c.* 90, *three pence*; and by 41 *G. III. c.* 10, the additional ſum of *ſixpence*. Total, 1*s.* 6*d.*—And exceeding 200*l.* by 31 *G. III. c.* 25, *one ſhilling*; 37 *G. III. c.* 90, *four pence*; and by 41 *G. III. c.* 10, the additional ſum of *eight pence*. Total, 2*s.*—And every bill of each ſet ſo drawn is declared to be chargeable with the duty.

By the laſt-mentioned act of 41 *G. III.* the commencement of the new duties, is from and after April 5, 1801.

Exemptions from theſe Duties.

1. Drafts, or orders, payable to bearer on demand, bearing date on or before the day on which they ſhall be iſſued, and at the place from which they ſhall be drawn and iſſued, and drawn upon any banker, or perſon acting as a banker, and reſiding and tranſacting buſineſs as a banker within ten miles of the place where ſuch draft or order ſhall be actually drawn and iſſued.

2. All

2. All notes and bills iſſued by the Bank of England, on condition of their paying into the Exchequer the annual ſum of 12,000*l.* in half-yearly payments, on *October* 10, and *April* 5.

Regulations made by the 31 *G. III. c.* 25, *ſtill in force.*

If any bill, &c. ſhall be written on paper not ſtampt, or ſtampt with a ſtamp of lower value than directed; then there ſhall be due and paid the full duty hereby chargeable; which ſhall be payable by all perſons who ſhall draw or make, and utter and negociate ſuch bills, &c. *ſ.* 6.

And, by the ſame ſtatute, all perſons who ſhall write or ſign, or cauſe to be written or ſigned, or who ſhall accept *or pay*, or cauſe to be accepted or paid, any bill, &c. without being firſt ſtampt with a proper ſtamp, or upon which there ſhall not be ſome ſtamp reſembling the ſame, ſhall forfeit 20*l.* *ſ.* 10.

And it is enacted in the 9th ſection of the ſame ſtatute, that every promiſſory or other note, which ſhall be iſſued after payment under this act, ſhall notwithſtanding be payable to the perſon holding the ſame; and ſuch perſon may maintain an action thereupon.

And, by the 19th ſection, no bill, &c. ſhall be available in law or equity, unleſs ſtamped with the lawful ſtamp; and that it ſhall not be lawful for the commiſſioners to ſtamp any paper, &c. after any bill, &c. ſhall be written thereon, under any pretence whatever.

Having a wrong ſtamp.

But, by the 37 *G. III. c.* 136, it ſhall be lawful for any perſon, who ſhall be the holder of any bill, note, draft, or order, made after *July* 20, 1797, which ſhall have a ſtamp of a different denomination from that which is required, if the ſame ſhall be of equal or ſuperior value to the ſtamp required, to produce the ſame within the times herein after mentioned, to the head office, or ſuch officer as the commiſſioners ſhall appoint; and the commiſſioners may direct the proper officer, upon payment of the duty, and ſuch penalty as is after mentioned, over and above the duty, to ſtamp ſuch bill, note, draft, or order, with the proper ſtamp, and to give a receipt for the duty and penalty, ſo paid, on the back of ſuch bill, note, draft, or order.

If any ſuch bill, note, draft, or order, ſhall be produced before the ſame ſhall be payable, the ſame ſhall be ſtamped on payment of the ſaid duty, and the penalty of 40*s.* but

if the ſame ſhall be payable before the production thereof to the commiſſioners, then the ſame ſhall not be ſtamped, unleſs on payment of the duty and 10*l.* penalty.

Small Bills and Notes.

Duties on ſmall notes.

By the 39 *G. III. c.* 107, it is enacted, that from and after December 1, 1799, there ſhall be charged, aſſeſſed, and paid on bills of exchange and promiſſory notes for ſmall ſums, the ſeveral duties herein-after mentioned, that is to ſay—

On a pound and guinea note.

For every bill of exchange, promiſſory note, or other note, draft, or order, whether payable on demand or otherwiſe, where the ſum expreſſed therein ſhall be for one pound, and one pound and one ſhilling each, there ſhall be charged a ſtamp duty of *two pence.*

5*s.* note.

And where the ſum expreſſed therein ſhall be five ſhillings, as herein-after mentioned, there ſhall be charged a ſtamp duty of *one halfpenny.*

Notes re-iſſuable.

For every promiſſory note or other note for the payment of money to the bearer on demand, payable only at the place where the ſame was firſt iſſued, and which may be re-iſſuable from time to time after payment at that place, where the ſum expreſſed therein ſhall be for one pound, or one pound one ſhilling, there ſhall be charged a duty of *two pence.* And where the ſum expreſſed therein ſhall be five ſhillings, there ſhall be a ſtamp duty of *one halfpenny.*

To the bearer on demand.

For every promiſſory note or other note for the payment of money to the bearer on demand, payable at two or more different places, or at any place different from that where it ſhall have been originally iſſued, and which may be re-iſſued from time to time after payment at the ſame place, or any other place than where the ſame was firſt iſſued, where the ſum expreſſed therein ſhall be for one pound, or one pound and one ſhilling, there ſhall be charged a ſtamp duty of *four pence.* And where the ſum expreſſed therein, or made payable thereby, ſhall be 5*s.* a ſtamp duty of *one penny.* N. B. The 5*s.* notes are only iſſuable in Scotland.

The duty is payable by the perſon who gives the note.

Drafts on a banker.

But nothing in this act ſhall extend to charge any draft or order for the payment of money on demand, upon any banker,

banker, or perſon acting as a banker, reſiding within ten miles of the place of abode of the drawer. And the Bank of England notes are exempted from the duties charged by this act on a compoſition of 4000*l.* and from all additional duties impoſed ſince the act of 31 *G. III. c.* 25, on a compoſition of 8000*l.* payable half yearly.

No bill of exchange ſhall be re-iſſued; but notes payable on demand, on which a duty of *two pence*, or *one half-penny*, is reſpectively impoſed, paid by perſons giving them at the places where firſt iſſued, may be re-iſſued; but if paid by any other perſons or at any other place, in purſuance of appointment expreſſed therein, ſhall be cancelled; and if re-iſſued, or if not cancelled, the party to forfeit 20*l.* And ſuch notes not cancelled, but again iſſued, ſhall pay the ſame as when firſt iſſued. Bills of exchange not re-iſſuable.

Notes which ſhall be ſtamped with the duty of four pence, and one penny, reſpectively, may be re-iſſued, though paid by other perſons than by whom, and at other places than where firſt iſſued. And notes ſo re-iſſuable ſhall be the property of the perſons holding them.

And whereas two acts paſſed in the 15th and 17th *G. III.* to reſtrain the negotiation of promiſſory notes under five pounds, made and negotiated in England, have been by ſeveral ſubſequent acts of the 37th, 38th and 39th of *G. III.* ſuſpended until and upon the 5th of July 1799, ſo as the ſame relate to any notes, drafts, or undertakings made payable on demand to the bearer thereof: and whereas it is expedient further to ſuſpend the ſaid acts of the 15th and 17th years aforeſaid, ſo far as the ſame relate to ſuch notes which ſhall be made for ſums of one pound and one ſhilling, and of one pound, each; be it further enacted, that the ſaid recited acts of the 15th and 17th years aforeſaid, ſo far as they relate to the making void of promiſſory notes, or other notes made payable on demand to the bearer thereof, for ſums of one pound and one ſhilling, and of one pound, each, and alſo ſo far as the ſame reſtrain the publiſhing and negotiating of any ſuch promiſſory notes, or other notes as aforeſaid, ſhall, from and after the 5th of July 1799, be further ſuſpended until and upon the 30th of November, 1802. Negotiation of certain notes ſuſpended.

From July 5, 1799, the Bank of Scotland, and the Royal Bank of Scotland, the Britiſh Linen Company, the Carron Company, and all other banks and banking companies in Scotland, may iſſue notes payable to bearer on demand for Bank of Scotland, &c. may iſſue ſmall notes.

5s. Sterling, as they have heretofore iſſued notes for 20s. and upwards. And ſuch iſſue may continue till December 1, 1800, and to the end of the next ſeſſion.

Provided that no bill of exchange, promiſſory note, bill, ticket, or other note in the nature of bank notes, ſhall, after the firſt of December, 1799, be iſſued in Scotland for any ſums under five pounds Sterling, except for five ſhillings or one guinea, on penalty of 10*l.* But the banks or companies in Scotland may, on licenſe, iſſue or re-iſſue notes for five ſhillings Sterling, and alſo one pound, and one guinea, drawn under the regulations mentioned in the act, unſtamped, on giving ſecurity for the payment of the duties.

After December 1, 1799, no perſons, except the Directors of the Bank or the Royal Bank of Scotland, or perſons acting under them, are licenſed to ſign or iſſue any unſtamped note.

Acts reſpecting ſtamp duties, not hereby altered, to extend to this act.

Notaries Fees of Office, as regulated on the 1st of July, 1797.

AT a meeting of a conſiderable number of notaries of the city of London, held at the George and Vulture tavern, July 1, 1797, the following reſolutions were agreed to, and ſince approved and confirmed by the Governor and Company of the Bank of England—

Within and without the walls.

Firſt, That after the 5th of July, 1797, the noting for all bills drawn upon, or addreſſed at the houſe of any perſon reſiding within the walls of the city of London, ſhall be charged one ſhilling and ſixpence; and without the walls, and not exceeding the limits here-under ſpecified, two ſhillings and ſixpence.

Second, For all bills drawn upon, or addreſſed at the houſe of any perſon reſiding between Old or New Bond-ſtreet, Wimpole-ſtreet, New Cavendiſh-ſtreet, Upper Mary-bone-ſtreet, Howland-ſtreet, Lower Gower-ſtreet, lower end of Gray's-inn-lane (and not off the pavement), Clerkenwell Church, Old-ſtreet, Shoreditch Church, Brick-

Brick-lane, St. George's in the Eaſt, Execution-dock, Wapping, Dock-head, upper end of Bermondſey-ſtreet (as far as the church), end of Blackman-ſtreet, end of Great Surrey-ſtreet, Blackfriars-road (as far as the Circus), Cuper's Bridge, Bridge-ſtreet, Weſtminſter, Arlington-ſtreet, Piccadilly, and the like diſtances, three ſhillings and ſixpence; and off the pavement, one ſhilling and ſixpence per mile additional.

Third, For proteſting a bill drawn upon, or addreſſed at the houſe of any perſon reſiding within the ancient walls of the city of London (including the ſtamp-duty of four ſhillings, and excluſive of the charge of noting), ſix ſhillings and ſixpence; and without the ancient walls of the city, including the like ſtamp duty, and excluſive of the ſaid charge of noting, eight ſhillings, agreeable to the ſecond article.

Fourth, That all *acts of honour* within the ancient walls of the ſaid city, ſhall be charged the ſum of one ſhilling and ſixpence upon each bill; and for all acts of honour without the ancient walls of the ſaid city, to be regulated agreeable to the charge of noting bills out of the city; and the like charge for any additional demand that may be made upon the ſaid bill, or when the ſame is mentioned and inſerted in the anſwer in the proteſt.

Fifth, For every *poſt demand and act thereof*, within the ancient walls of the ſaid city, two ſhillings and ſixpence; and without the walls of the ſaid city, three ſhillings and ſixpence (provided the ſame be only regiſtered in the notary's books), and ſo in proportion according to the diſtance, to be regulated agreeable to the charge of noting bills.

Sixth, For every *copy of bill paid in part*, and a receipt at foot of *ſuch copy*, two ſhillings; and ſo in proportion for every additional bill ſo copied, excluſive of the receipt ſtamp.

Seventh, For every *duplicate proteſt* of one bill (including four ſhillings for the duty), ſhall be charged ſeven ſhillings and ſixpence; and ſo in like proportion of three ſhillings and ſixpence (excluſive of the duty) for every additional bill.

Eighth, For every folio of *ninety words*, tranſlated from the French, Dutch, or Flemiſh, into Engliſh, ſhall be charged one ſhilling and ſixpence; and from Engliſh into French, Dutch or Flemiſh, two ſhillings for each ſuch folio; and from Italian, Spaniſh, Portugueze, German,

Daniſh, and Swediſh, one ſhilling and nine pence per folio of ninety words; and from Latin two ſhillings and ſixpence per folio; and for atteſting the ſame to be a true tranſlation, if neceſſary, ſeven ſhillings and ſixpence, excluſive of fees and ſtamps.

Ninth, That all *atteſtations to letters of attorney*, affidavits, &c. at the requeſt of any gentleman in the law, ſhall be charged ſeven ſhillings and ſixpence, excluſive of fees, ſtamps, and attendance.

Tenth, For every *city ſeal*, one guinea for one deponent, excluſive of attendance and exemplification; and if more than one deponent, ten ſhillings and ſixpence for each additional affidavit.

Eleventh, For all *notarial copies* ſhall be charged ſixpence per folio of ſeventy-two words, excluſive of atteſtation, ſtamps, &c. *Chitty's Tr.* 252.

APPENDIX.

By 44 G. III. c. 98. a new regulation respecting notes, and bills of exchange, took place.

By this act, a promiſſory note, for the payment of money to bearer on demand (which may, within three years, but not at a later period, be re-iſſued) where the ſum ſhall not exceed one pound and one ſhilling - - - - - - - £. 0 s. 0 d. 3

Exceeding 1 *l.* 1 *s.* and not 2 *l.* 2 *s.* - -	0	0	6
Exceeding 2 *l.* 2 *s.* and not 5 *l.* 5 *s.* - -	0	0	9
Exceeding 5 *l.* 5 *s.* and not 20 *l.* - - -	0	1	0
Promiſſory note by the bank of Scotland, or royal bank of Scotland, or the Britiſh linen company, payable to bearer on demand, which may within three years be re-iſſued where the ſum amounts to and ſhall not exceed one hundred pounds - - - -	0	5	0
Bill of exchange, or promiſſory or other note, payable to the bearer on demand, for forty ſhillings, and not exceeding 5 *l.* 5 *s.* -	0	0	8
——— otherwiſe than to the bearer on demand, where the ſum ſhall amount to forty ſhillings, and ſhall not exceed 5 *l.* 5 *s.*	0	1	0
Bill of exchange, or promiſſory or other note, for the payment of money, where the ſum ſhall exceed 5 *l.* 5 *s.* and not 30 *l.* - -	0	1	6
Exceeding 30 *l.* and not 50 *l.* - - -	0	2	0
Exceeding 50 *l.* and not 100 *l.* - - -	0	3	0
Exceeding 100 *l.* and not 200 *l.* - - -	0	4	0
Exceeding 200 *l.* and not 500 *l.* - - -	0	5	0
Exceeding 500 *l.* and not 1,000 *l.* - -	0	7	6
Exceeding 1,000 *l.* - - - - -	0	10	0
Foreign bills of exchange drawn in ſets, not exceeding one hundred pounds, for each bill in each ſet - - - - - -	0	1	0
Exceeding 100 *l.* and not 200 *l.* - - -	0	2	0
Exceeding 200 *l.* and not 500 *l.* - - -	0	3	0
Exceeding 500 *l.* and not 1,000 *l.* - -	0	4	0
Exceeding 1,000 *l.* - - - - -	0	5	0

By the ſame ſtatute, the following exemptions are allowed, *viz.*

Bills of exchange, promiſſory, and other notes and bills, iſſued by the bank of England, are exempted, on condition of their paying annually 32,000 *l.*

Draft

Drafts on a banker for the payment of money, if within ten miles of the place at which such draft shall be given, shall also be exempted.

No note payable to bearer on demand, which shall bear date before or on October 10th, 1804, shall be re-issued after October 10th, 1805, but shall be cancelled on penalty of 20l. s. 21.

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